

1 Robert A. Naeve (State Bar No. 106095)
2 rnaeve@jonesday.com
3 Cary D. Sullivan (State Bar No. 228527)
4 carysullivan@jonesday.com
5 JONES DAY
6 3161 Michelson Drive, Suite 800
7 Irvine, CA 92612.4408
8 Telephone: +1.949.851.3939
9 Facsimile: +1.949.553.7539

10 Nathaniel P. Garrett (State Bar No. 248211)
11 ngarrett@jonesday.com
12 JONES DAY
13 555 California Street, 26th Floor
14 San Francisco, CA 94104-1500
15 Telephone: +1.415.626.3939
16 Facsimile: +1.415.875.5700

17 Attorneys for Defendant
18 David Yamasaki

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 SOUTHERN DIVISION

22 Courthouse News Service,
23 Plaintiff,

24 v.

25 David Yamasaki, in his official
26 capacity as Court Executive
27 Officer/Clerk of the Orange County
28 Superior Court,
Defendant.

Case No. 8:17-cv-00126 AG (KESx)

Assigned for all purposes to
Hon. Andrew J. Guilford

**DEFENDANT DAVID
YAMASAKI'S OBJECTIONS TO
EVIDENCE SUBMITTED IN
SUPPORT OF OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT**

Date: January 29, 2018
Time: 10:00 a.m.
Courtroom: 10D
Judge: Hon. Andrew J. Guilford

Defendant David Yamasaki, in his official capacity as Court Executive Officer/Clerk of the Orange County Superior Court (“OCSC”) submits the following evidentiary objections to the declarations of William Girdner, Joanna Mendoza, Craig Rosenberg, Jonathan Fetterly, accompanying exhibits thereto, exhibits attached to ECF No. 12, and exhibits attached to ECF No. 92 referenced by Plaintiff Courthouse News Service (“CNS”) In Support of Its Opposition to OCSC’s Motion for Summary Judgment. OCSC respectfully requests the Court sustain the below objections and strike the following evidence.

I. OBJECTIONS TO DEPOSITION OF WILLIAM GIRDNER

OBJECTION NO. 1:

“CNS's news media subscribers rely on us to provide them with timely information about civil litigation, our specialty, so they can provide information about those cases to their own readers and viewers. In recent years, as the traditional news industry has withered, we have seen an increasing number of news organizations become CNS subscribers. At the same time, we have seen news organizations cut back on court coverage. The end result is that in many courts CNS effectively serves as a pool reporter, with its reporter sometimes the only journalist reporting on that court.” (ECF No. 86, Declaration of William Girdner (“Girdner Decl.”) ¶ 12, 5:13-20.)

GROUND FOR OBJECTION NO. 1:

Lack of foundation as to personal knowledge; speculation. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his speculative statement as to what CNS subscribers purportedly “rely on” CNS to provide. He further fails to establish foundation for his assertion regarding how other news organizations handle “court coverage.” As a result, his concluding sentence regarding the “end result” necessarily lacks foundation as well.

OBJECTION NO. 2:

“I have observed a longstanding tradition in state and federal courts throughout the country whereby news reporters review new complaints on the day they are received, before clerks performed the administrative tasks that follow a court's receipt of a new complaint.” (ECF No. 86, Girdner Decl. ¶ 19, 8:11-14.)

GROUND FOR OBJECTION NO. 2:

Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his purported observance of “a longstanding tradition in state and federal courts around the country,” or even which courts those are. Mr. Girdner also purports to state a legal conclusion in this context by opining as to a purported tradition. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986). In addition, Mr. Girdner’s statement is contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder’s assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the “report card” published by CNS demonstrating that, even in California alone, there is no such tradition. ECF No. 75-6, Declaration of Cary D. Sullivan (“Sullivan Decl.”) ¶ 2, Ex. A (pp. 6-23).

OBJECTION NO. 3:

“Before the advent of e-filing, federal and state courts in California typically gave reporters access to the day's complaints by providing them in paper form in a box, bin or stack on, behind, beside, or near the intake counter at the end of the day, when courthouse beat reporters would visit the court to learn what had been filed that day.” (ECF No. 86, Girdner Decl. ¶ 20, 8:16-20.)

GROUND FOR OBJECTION NO. 3:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his assertion as to what California state and federal courts “typically” did before the advent of e-filing, and which courts those are. Moreover, Mr. Girdner’s statement is contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder’s assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the “report card” published by CNS demonstrating that, even in California alone, there is no such tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex. A (pp. 6-23).

OBJECTION NO. 4:

“The tradition of press access was alive and well in the superior courts of California when the paper medium was dominant.... Many of the superior courts that had bad grades on the Report Card were willing to return traditional access to news reporters.... These courts are addressed in detail in the declarations submitted by myself, and current and former CNS employees, in the *Courthouse News v. Planet* case.” (ECF No. 86, Girdner Decl. ¶ 33, 14:20-15:18.)

GROUND FOR OBJECTION NO. 4:

Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his purported observance of “a tradition of press access,” or even which courts observed such a tradition. Mr. Girdner also purports to state a legal conclusion in this context by opining as to a purported tradition. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986). In addition, Mr. Girdner’s statement is contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder’s assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the “report card” published by CNS demonstrating that,

1 even in California alone, there is no such tradition. ECF No. 75-6, Declaration of
 2 Cary D. Sullivan (“Sullivan Decl.”) ¶ 2, Ex. A (pp. 6-23).

3 **OBJECTION NO. 5:**

4 “...he [Alan Carlson] stated that he does not believe the press should have
 5 access to new civil actions e-filed in his court until after they are officially "accepted"
 6 into the court's docketing system.” (ECF No. 86, Girdner Decl. ¶ 34, 15:23-25.)

7 **GROUND FOR OBJECTION NO. 5:**

8 **Inadmissible hearsay; contradicted by evidence.** Fed. R. Evid. 801, 802.

9 Mr. Girdner’s assertion regarding Mr. Carlson’s purported out-of-court
 10 statement, which is being offered for the truth of the matter asserted, constitutes
 11 classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid.
 12 § 801:5 (8th ed. 2017) (“If the evidentiary purpose is to prove a fact asserted, and
 13 such purpose is not approved under Evid. R. 801(d), then the hearsay objection
 14 should be sustained.”). In addition, Mr. Girdner’s statement is contradicted by Mr.
 15 Carlson himself. *See* ECF No. 17-8, Declaration of Alan Carlson In Support of
 16 Opposition to Motion for Preliminary Injunction (“Carlson Decl.”), ¶¶ 3-4.

17 **OBJECTION NO. 6:**

18 “After the remodel, the clerk then leased a room to The Orange County
 19 Register directly across from the viewing area for court records, a room which I
 20 understand, based on CNS's coverage of the court, that newspaper still leases today.”
 21 (ECF No. 86, Girdner Decl. ¶ 45, 19:24-27.)

22 **GROUND FOR OBJECTION NO. 6:**

23 **Lack of foundation as to personal knowledge; contradicted by the**
 24 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

25 Mr. Girdner fails to establish foundation for his purported knowledge
 26 regarding whether and how the OCSC clerk supposedly leased space to the Orange
 27 County Register. This statement is also directly contradicted by the reply declaration
 28 of Jeff Wertheimer in which Mr. Wertheimer describes how the State of California

owns the building that houses OCSC's Central Justice Center, and how the State – not OCSC – leases space in the building to each of the tenants in the building, including the Orange County Register. Declaration of Jeff Wertheimer In Support Of Reply (“Wertheimer Decl. ISO Reply”) ¶ 2. This statement is further contradicted by David Yamasaki's deposition testimony to the same effect. Declaration Cary D. Sullivan In Support of Reply (“Sullivan Decl. ISO Reply”) ¶ 7; Ex. E, David Yamasaki Deposition Testimony (“Yamasaki Depo.”), 114:16-21.

OBJECTION NO. 7:

“Based on my review of the transcript of Mr. Yamasaki's deposition in this case, it is my understanding there is no reason, other than OCSC's current processing policy, why OCSC could not put a computer terminal into that room for the press to review new complaints as they are received and before processing, including complaints that are e-filed after the clerk's office closes for the day, which under OCSC local rules are given that day's "filed" date if filed before midnight.” (ECF No. 86, Girdner Decl. ¶ 45, 20:3-8.)

GROUND FOR OBJECTION NO. 7:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his assertions regarding OCSC's purported “policy” as well as whether and how OCSC can place its public computer terminals. Further, Mr. Girdner's suggestion that OCSC could place a terminal in a room that it leases to the Orange County Registered is based on a false premise – that OCSC somehow controls the room. As demonstrated in Mr. Wertheimer's reply declaration and Mr. Yamasaki's deposition testimony, OCSC does not lease space to The Register, nor does OCSC have any right to use or place anything in The Register's room, because The Register leases that space directly from the State of California. Wertheimer Decl. ISO Reply ¶ 2; Sullivan Decl. ISO Reply ¶ 7, Ex. E, Yamasaki Depo., 114:16-21.

OBJECTION NO. 8:

“In 2002, OCSC supervisor Connie Pilcher called a meeting to tell news reporters covering the court that they would no longer see new complaints in the press box at the end of the day, and would henceforth be required to review them on the day following receipt.” (ECF No. 86, Girdner Decl. ¶ 46, 20:9-13.)

GROUND FOR OBJECTION NO. 8:

Inadmissible hearsay. Fed. R. Evid. 801, 802.

Mr. Girdner’s assertion regarding Ms. Pilcher’s purported out-of-court statement, which is being offered for the truth of the matter asserted, constitutes classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. § 801:5 (8th ed. 2017) (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

OBJECTION NO. 9:

“Ms. Levitzky began to express sympathy and some agreement with our request, ...Mr. Slater acknowledged that press access to new complaints had been delayed by at least four or five days but expressed the view that such delays were just fine. He was adamant in his refusal to consider our request to reinstate traditional press access on the day of filing, and made it clear he was willing to litigate the matter.” (ECF No. 86, Girdner Decl. ¶ 47, 20:17-22.)

GROUND FOR OBJECTION NO. 9:

Inadmissible hearsay; lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 801, 802; Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner’s assertions regarding Ms. Levitzky’s and Mr. Slater’s purported out-of-court statements, offered for the truth of the matters asserted, constitute classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not

1 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

2 Mr. Girdner also fails to establish foundation for his assertion regarding the
3 purported “traditional press access on the day of filing,” which statement is
4 contradicted by evidence in any event, specifically numerous third-party declarations
5 in which court reporters actually contradict Mr. Girnder’s assertion, ECF No. 12,
6 Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59;
7 Ross Decl. ¶ 7; William Decl. ¶ 10, and the “report card” published by CNS
8 demonstrating that, even in California alone, there is no such tradition. ECF No. 75-
9 6, Sullivan Decl. ¶ 2, Ex. A(pp. 6-23).

10 **OBJECTION NO. 10:**

11 “...Ms. Mehta informed the clerk's staff that because of the delays, the Times
12 had largely stopped reporting on new cases filed in that court. She explained that
13 reporters could not ‘sell’ a breaking story to editors when it was a day old.” (ECF
14 No. 86, Girdner Decl. ¶ 48, 21:1-4.)

15 **GROUND FOR OBJECTION NO. 10:**

16 **Inadmissible hearsay.** Fed. R. Evid. 801, 802.

17 Mr. Girdner’s assertion regarding Ms. Mehta’s purported out-of-court
18 statements, offered for the truth of the matters asserted, constitutes classic and
19 inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5
20 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not
21 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

22 **OBJECTION NO. 11:**

23 “And it has been CNS's experience that the more important and newsworthy
24 actions tend to be filed late in the day, making them particularly prone to extended
25 delays in press access where courts condition access on processing.” (ECF No. 86,
26 Girdner Decl. ¶ 53, 22:13-16.)

27 **GROUND FOR OBJECTION NO. 11:**

28 **Lack of foundation as to personal knowledge; irrelevant; misleading and**

1 **prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

2 Mr. Girdner fails to establish foundation for his assertion regarding “more
3 important and newsworthy actions” supposedly being filed “late in the day,” nor
4 does he identify or provide data to support this bald assertion. Moreover, the
5 assertion is rendered irrelevant as a matter of fact by CNS’s repeated admission in
6 its evidentiary objections to OCSC’s summary judgment motion that, “Courthouse
7 News Service is not requesting that the OCSC identify and promptly publish only
8 ‘newsworthy’ complaints; it is asking that OCSC make all complaints available the
9 same day they are submitted by the filer.” ECF No. 93, CNS Evidentiary
10 Objections (“CNS Evid. Obj.”), 5:15-18, 8:18-21, 12:12-15. As a result, CNS’s
11 focus on supposedly “newsworthy” complaints is irrelevant and can only be
12 intended to confuse or mislead the Court, and is therefore prejudicial.

13 **OBJECTION NO. 12:**

14 “Since the *Times* no longer staffs OCSC with a reporter, and the story was
15 written from Sacramento, it is very likely the complaint was forwarded to the *Times*
16 by the plaintiff attorney, allowing the *Times* to play up the story while beating its
17 rival of old, *The Orange County Register*.” (ECF No. 86, Girdner Decl. ¶ 58, 24:10-
18 13.)

19 **GROUND FOR OBJECTION NO. 12:**

20 **Lack of foundation as to personal knowledge; contradicted by the**
21 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

22 Mr. Girdner fails to establish foundation for his assertion that “the Times no
23 longer staffs OCSC with a reporter.” He further fails to establish foundation for his
24 speculation as to how the Times received the subject complaint. As set forth in Ms.
25 Ochoa’s reply declaration, the subject complaint was made public at 9:28 a.m. on
26 August 29, 2017, the morning of the day the Times published its story. Declaration
27 of Sara Ochoa In Support Of Reply (“Ochoa Decl. ISO Reply”) ¶ 6. Mr. Girdner
28 fails to explain why the Times would supposedly be unable to access the complaint

1 on the public docket and draft and publish a story about the complaint in the 5½ hours
2 between when the complaint was made public and when the Times published its story
3 at 3:00 p.m. that afternoon.

4 **OBJECTION NO. 13:**

5 “As a result of the Clerk's process-first policy, reporting on an important
6 complaint against a celebrated local business was held up by 23 and 26 normal
7 hours.” (ECF No. 86. Girdner Decl. ¶ 58, 24:15-17.)

8 **GROUND FOR OBJECTION NO. 13:**

9 **Lack of foundation as to personal knowledge; irrelevant; misleading and**
10 **prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

11 Mr. Girdner fails to establish foundation for his assertion regarding OCSC's
12 “policy.” Moreover, this assertion is rendered irrelevant as a matter of fact by
13 CNS's repeated admission in its evidentiary objections to OCSC's summary
14 judgment motion that, “Courthouse News Service is not requesting that the OCSC
15 identify and promptly publish only ‘newsworthy’ complaints; it is asking that
16 OCSC make all complaints available the same day they are submitted by the filer.”
17 ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS's focus
18 on supposedly “important” or newsworthy complaints is irrelevant and can only be
19 intended to confuse or mislead the Court, and is therefore prejudicial.

20 **OBJECTION NO. 14:**

21 “[Ms. Levitzky] informed me that she discussed the matter with her supervisor,
22 who flatly denied the delays.” (ECF No. 86, Girdner Decl. ¶ 61, 25:25-26:1.)

23 **GROUND FOR OBJECTION NO. 14:**

24 **Inadmissible hearsay.** Fed. R. Evid. 801, 802.

25 Mr. Girdner's assertion regarding Ms. Levitzky's purported out-of-court
26 statement, as well as that of her “supervisor,” both of which are offered for the truth
27 of the matters asserted, constitutes classic and inadmissible hearsay. *See* Fed. R.
28 Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If the evidentiary purpose is to

1 prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then
2 the hearsay objection should be sustained.”).

3 **OBJECTION NO. 15:**

4 “At that meeting, Mr. Carlson acknowledged that there was a delay between
5 when the court received a civil complaint fore-filing and when it became available to
6 the press and public. He said the delay was due to a backlog in processing other
7 filings before his staff processed new complaints.” (ECF No. 86, Girdner Decl. ¶ 64,
8 26:20-24.)

9 **GROUND FOR OBJECTION NO. 15:**

10 **Inadmissible hearsay; contradicted by evidence.** Fed. R. Evid. 801, 802.

11 Mr. Girdner’s assertion regarding Mr. Carlson’s purported out-of-court
12 statements, offered for the truth of the matters asserted, constitute classic and
13 inadmissible hearsay. Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If
14 the evidentiary purpose is to prove a fact asserted, and such purpose is not approved
15 under Evid. R. 801(d), then the hearsay objection should be sustained.”). Mr.
16 Girdner’s assertion is also contradicted by Mr. Carlson himself. *See* Carlson Decl.,
17 ¶¶ 3-4.

18 **OBJECTION NO. 16:**

19 “Mr. Carlson acknowledged then in 2010 that the in-box was ‘technically
20 possible,’ or words to that effect...” (ECF No. 86, Girdner Decl. ¶ 65, 27:1-2.)

21 **GROUND FOR OBJECTION NO. 16:**

22 **Inadmissible hearsay; contradicted by evidence.** Fed. R. Evid. 801, 802.

23 Mr. Girdner’s assertion regarding Mr. Carlson’s purported out-of-court
24 statements, offered for the truth of the matters asserted, constitute classic and
25 inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5
26 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not
27 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).
28 Mr. Girdner’s assertion is also contradicted by Mr. Carlson himself. *See* Carlson

Decl., ¶ 5.

OBJECTION NO. 17:

“In the meeting with Mr. Carlson, he argued with vehemence that the press had no right to see a filing until his staff had completed administrative processing, saying words to the effect, ‘It’s not filed until I put my stamp on it.’” (ECF No. 86, Girdner Decl. ¶ 66, 5:7.)

GROUND FOR OBJECTION NO. 17:

Inadmissible hearsay; contradicted by evidence. Fed. R. Evid. 801, 802.

Mr. Girdner’s assertion regarding Mr. Carlson’s purported out-of-court statements, offered for the truth of the matters asserted, constitute classic and inadmissible hearsay. Mr. Girdner’s assertion is also contradicted by Mr. Carlson himself. *See* Carlson Decl., ¶¶ 3-4.

OBJECTION NO. 18:

“The introduction of e-filing rules was accompanied by what I saw as a pincer movement to degrade traditional timely access. The first part of the pincer movement was a proposed rule that gave clerks a justification for withholding access until new filings were processed.” (ECF No. 86, Girdner Decl. ¶ 75, 30-15-18.)

GROUND FOR OBJECTION NO. 18:

Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence; inadmissible hearsay; contradicted by evidence.

Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

Mr. Girdner opines as to a so-called “pincer movement” without establishing foundation that such a movement is anything more than a figment of his own imagination. Moreover, Mr. Girdner’s implication of a conspiracy is directly contradicted by the California Rules of Court, which provide that e-filing “does not include the processing and review of the document, and its entry into the court records, which are necessary for a document to be officially filed.” *See* Cal. R. Ct. 2.250(B)(7).

OBJECTION NO. 19:

“Similarly, state courts in Alabama, Connecticut, Georgia, Nevada, New York, Utah, and most recently, in Fresno County, California, also provide electronic access to new e-filed civil complaints upon receipt, before processing. As with federal district courts, there are variations in how the state courts provide that access. Such access can be provided online over the Internet, locally through terminals at the courthouse, or through both methods. In some courts, new e-filed actions are automatically accepted, while in others complaints bear only temporary numbers when they first appear in the electronic in-box and receive a permanent case number only after administrative tasks are completed. Some jurisdictions limit electronic in-box access to credentialed press, while others open the in-box to any interested member of the public. In some jurisdictions, the press can review late filed e-filed complaints at the courthouse, as they are received, in press rooms even after the clerk's office has shut for the night. In all instances, the method used provides timely access to new civil complaints as soon as they are filed, upon receipt, before they are processed, akin to the pre-docketing access traditionally provided to paper-filed complaints.” (ECF No. 86, Girdner Decl. ¶ 92, 26:8-23.)

GROUND FOR OBJECTION NO. 19:

Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his assertions regarding the various practices ascribed to state and federal courts across the country, and he fails to identify the specific courts referenced. Moreover, Mr. Girdner's assertions are contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girnder's assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the “report card” published by CNS demonstrating that, even in California alone, there is no such

1 tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex. A (pp. 6-23).

2 In addition, Mr. Girdner purports to state a legal conclusion as to whether and
3 how various purported methods provide “timely access” to new complaints.

4 **OBJECTION NO. 20:**

5 “Implementing an electronic in-box is a matter of fairly basic programming by
6 court IT staff or e-filing vendors. I understand from the clerk for Georgia's Fulton
7 County Superior Court that when that court decided to set up its electronic in-box, its
8 e-filing vendor was able to do so quickly and at no cost to the court.” (ECF No. 86,
9 Girdner Decl. ¶ 93, 36:24-37:1.)

10 **GROUND FOR OBJECTION NO. 20:**

11 **Lack of foundation as to personal knowledge; speculation; inadmissible**
12 **hearsay.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

13 Mr. Girdner fails to establish foundation for his assertion regarding whether
14 and how “an electronic in-box” could be added through “fairly basic programming,”
15 to OCSC’s court case management system (“CCMS”). Mr. Girdner has no personal
16 knowledge regarding OCSC’s CCMS, and cannot establish otherwise, rendering his
17 suggestion pure speculation.

18 In addition, Mr. Girdner’s assertion regarding the Georgia clerk’s purported
19 out-of-court statements, offered for the truth of the matter asserted, constitutes classic
20 and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At §
21 801:5 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not
22 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

23 **OBJECTION NO. 21:**

24 “The ease with which courts have been able to set up electronic in-boxes is
25 consistent with my own experience based on supervising CNS 's programmers who
26 configure our subscribers' means of accessing CNS content electronically.” (ECF No.
27 86, Girdner Decl. ¶ 93, 37:8-11.)

GROUND FOR OBJECTION NO. 21:

Lack of foundation as to personal knowledge; irrelevant. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402.

Mr. Girdner fails to establish foundation for his purported knowledge regarding “the ease with which courts have been able to set up electronic in-boxes,” and he fails to identify any of the courts with which he’s supposedly familiar.

In addition, Mr. Girdner’s purported “experience supervising CNS’s programmers who configure our subscribers’ means of accessing CNS content electronically” is irrelevant with respect to court e-filing systems. Because Mr. Girdner fails to establish foundation for any purported relation between court e-filing systems, including OCSC’s CCMS (about which Mr. Girdner has no personal knowledge, and he cannot establish otherwise), and CNS’s own electronic systems, which do not involve any sort of court filings, such that Mr. Girdner’s assertion is irrelevant as a matter of fact.

OBJECTION NO. 22:

“On December 11, 2017, I communicated via email with Fresno Superior Court’s manager in charge of its Case Management System, Kevin Anderson. In this e-mail exchange, Mr. Anderson explained how Fresno County Superior Court designed and successfully implemental a technological security option that safeguarded confidential filings from public view in the press review site. A true and correct copy of this email string is attached at Exhibit 20.” (ECF No. 86, Girdner Decl. ¶ 100, 42:19-24.)

GROUND FOR OBJECTION NO. 22:

Inadmissible hearsay; violation of the Best Evidence Rule; contradicted by evidence. Fed. R. Evid. 801, 802; Fed. R. Evid. 1002.

Mr. Girdner’s assertions regarding Mr. Anderson’s purported out-of-court statements, offered for the truth of the matters asserted, constitute classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5

1 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not
2 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

3 In addition, Mr. Girdner’s characterization of Mr. Anderson’s statements is
4 contradicted by the attached email string, which speaks for itself, and in which Mr.
5 Anderson relays that the changes were made by an outside vendor, and that Mr.
6 Anderson lacks any personal knowledge about them. *See* ECF No. 87, Ex. 20 to
7 Girdner Decl. (pp. 544-557).

8 **OBJECTION NO. 23:**

9 “Other state courts that provide electronic access to new e-filed civil
10 complaints upon receipt, before clerk review or processing, include Fresno Superior
11 Court in California, four courts in Georgia (the State Court of Fulton County, the
12 Superior Court of Fulton County, the State Court of DeKalb County, and the Superior
13 Court of DeKalb County), Hartford County Superior Court in Connecticut, Jefferson
14 County Circuit Court in Alabama, Salt Lake County Court (Third Judicial District)
15 in Utah, and the Eighth Judicial District Court of Nevada.” (ECF No. 86, Girdner
16 Decl. ¶ 111, 50:21-27.)

17 **GROUND FOR OBJECTION NO. 23:**

18 **Lack of foundation as to personal knowledge; contradicted by the**
19 **evidence; irrelevant.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401,
20 402.

21 Mr. Girdner fails to establish foundation for his assertions regarding the
22 practices ascribed to the various courts. Moreover, Mr. Girdner’s assertions are
23 contradicted by evidence submitted both by CNS and OCSC, specifically numerous
24 third-party declarations in which court reporters actually contradict Mr. Girnder’s
25 assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16;
26 Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the “report card”
27 published by CNS demonstrating that, even in California alone, there is no such
28 tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex. A (pp. 6-23).

1 In addition, Mr. Girdner does not state that such electronic access means *public*
2 access, thereby rendering the assertion irrelevant as a matter of fact.

3 **OBJECTION NO. 24:**

4 “The Clerk's Office at OCSC has followed a similar roller coaster when it
5 comes to processing. Measured over five days just before May 29, 2016, when Judge
6 James Otero handed down his motion for summary judgment ruling in the Planet
7 case, the OCSC Clerk's Office was taking two days to process, providing access to
8 only 6% of the new unlimited complaints on the day of filing, and withholding 82%
9 for two days or more. After the ruling, the Clerk's Office sped up processing and by
10 mid-August 2016, nearly half of the unlimited complaints, 51.5%, could be seen on
11 the day of filing with a lesser 9.4% withheld for two days or more. But by early
12 October 2016 the Clerk's office had dropped down low again and was processing
13 only 12.9% on the day of filing while withholding 59.5% for two days or more.”
14 (ECF No. 86, Girdner Decl. ¶ 131, 62:5-15.)

15 **GROUND FOR OBJECTION NO. 24:**

16 **Lack of foundation as to personal knowledge; contradicted by the**
17 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

18 Mr. Girdner fails to establish any foundation whatsoever for the cited statistics.
19 Mr. Girdner fails to establish any analytical foundation for how he arrived at these
20 statistics, fails to establish any foundation for his purported personal knowledge of
21 the statistics, and further fails to identify or provide source data for the statistics
22 themselves.

23 In addition, the referenced statistics are contradicted by OCSC business
24 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary
25 injunction and summary judgment papers, which data underlies OCSC’s calculations
26 regarding when new civil unlimited complaints are made public relative to receipt.
27 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”
28 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2,

1 Declaration of Sara Ochoa (“Ochoa Decl.”) ¶¶ 28-29, Ex. C (pp. 20-30); ECF No.
2 75-3, Declaration of Deborah T. Kruse (“Kruse Decl.”) ¶¶ 11-12. While CNS argues
3 that OCSC’s calculations are a mischaracterization because they are based on
4 business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF
5 No. 83, CNS’s Opposition to OCSC’s Motion for Summary Judgment (“Opp.”),
6 15:1-16:14.

7 **OBJECTION NO. 25:**

8 “In the next year, 2017, the Clerk's Office followed the same pattern. The
9 week before the complaint in CNS v. Yamasaki was filed on January 24, 2017, the
10 Clerk's Office was processing, and providing access to, only 21% of new unlimited
11 complaints on the day of filing and 19.8% were withheld two days or more. In early
12 February, the percentage of cases processed and able to be seen on the day of filing
13 jumped up to 44.1% with 13.3% withheld two days or more. Then began a series of
14 ups and downs, dropping to 22.1% of complaints processed and provided on the day
15 of filing in early April, rising to 62.4% in mid-May, dropping to 8.4% in mid-July
16 then jumping to 55.1% in mid-September, before dropping down to 39.8% being
17 processed and provided to the press and public on the day of filing in mid-October
18 2017, with 11.8% withheld two days or more.” (ECF No. 86, Girdner Decl. ¶ 132,
19 62:16-26.)

20 **GROUND FOR OBJECTION NO. 25:**

21 **Lack of foundation as to personal knowledge; contradicted by the**
22 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

23 Mr. Girdner fails to establish any foundation whatsoever for the cited statistics.
24 Mr. Girdner fails to establish foundation for his purported personal knowledge of the
25 statistics and further fails to establish foundation, and fails to identify or provide
26 source data, for the statistics themselves.

27 In addition, the referenced statistics are contradicted by OCSC business
28 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary

1 injunction and summary judgment papers, which data underlies OCSC's calculations
2 regarding when new civil unlimited complaints are made public relative to receipt.
3 Significantly, CNS does not contest the data contained in the "Turnaround Reports,"
4 and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa
5 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While
6 CNS argues that OCSC's calculations are a mischaracterization because they are
7 based on business hours, CNS does not dispute the accuracy of the actual numbers.
8 *See* ECF No. 83, Opp., 15:1-16:14.

9 **OBJECTION NO. 26:**

10 "But the roller coaster is most pronounced in the Complex Division of OCSC,
11 where the most important and newsworthy litigation is filed. In January of 2017, prior
12 to CNS's filing of its complaint in this action, the complex unit provided access to
13 only 3.2% of the newly filed complex complaints on the day of filing. In the month
14 of February 2017, that percentage jumped modestly to 29.2%. The pace continued to
15 ramp up to a peak of 42.1% in August 2017. In other words, timely access was
16 provided to less than half the cases when the unit was working at its fastest pace. The
17 processing rate then began to slide, dramatically. In October, only 13.5% of the new
18 complex cases could be reviewed on the day they were filed, and by the end of
19 December 2017, the monthly rate of access on the day of filing had dropped to 9.8%,
20 back to the bottom where the roller coaster started out in late January." (ECF No. 86,
21 Girdner Decl. ¶ 133, 63:5-16.)

22 **GROUND FOR OBJECTION NO. 26:**

23 **Lack of foundation as to personal knowledge; contradicted by the**
24 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.
25 R. Evid. 401, 402, 403.

26 Mr. Girdner fails to establish any foundation whatsoever for the cited statistics.
27 Mr. Girdner fails to establish foundation for his purported personal knowledge of the
28 statistics and further fails to establish foundation, and fails to identify or provide

1 source data, for the statistics themselves.

2 In addition, the referenced statistics are contradicted by OCSC business
3 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary
4 injunction and summary judgment papers, which data underlies OCSC’s calculations
5 regarding when new civil unlimited complaints are made public relative to receipt.
6 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”
7 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa
8 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While
9 CNS argues that OCSC’s calculations are a mischaracterization because they are
10 based on business hours, CNS does not dispute the accuracy of the actual numbers.
11 *See* ECF No. 83, Opp., 15:1-16:14.

12 Mr. Girdner also fails to establish foundation for his assertion regarding “most
13 important and newsworthy litigation” supposedly being civil complex actions.
14 Moreover, this assertion is rendered irrelevant as a matter of fact by CNS’s repeated
15 admission in its evidentiary objections to OCSC’s summary judgment motion that,
16 “Courthouse News Service is not requesting that the OCSC identify and promptly
17 publish only ‘newsworthy’ complaints; it is asking that OCSC make all complaints
18 available the same day they are submitted by the filer.” ECF No. 93, CNS Evid. Obj.,
19 5:15-18, 8:18-21, 12:12-15. As a result, CNS’s focus on supposedly “newsworthy”
20 civil complex complaints is irrelevant and can only be intended to confuse or mislead
21 the Court, and is therefore prejudicial.

22 **OBJECTION NO. 27:**

23 “In sum, the statistics show that for the 488 complex complaints filed in 2017,
24 about one fifth (21.9%) were made available without delay. The bulk of the complex
25 complaints (78%) were withheld for one to seven days while they were processed.
26 That set of withheld complex cases was about evenly split between two fifths (39.5%)
27 that were withheld one day and two fifths (38.5%) that were withheld for two days
28 up to seven days. By even the most elastic interpretation of the word ‘timely,’ such

1 access cannot be considered timely access.” (ECF No. 86, Girdner Decl. ¶ 134, 62:22-
2 64:2.)

3 **GROUND FOR OBJECTION NO. 27:**

4 **Lack of foundation as to personal knowledge; improper legal conclusion;**
5 **contradicted by the evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602;
6 Fed. R. Evid. 701.

7 Mr. Girdner fails to establish any foundation whatsoever for the cited statistics.
8 Mr. Girdner fails to establish foundation for his purported personal knowledge of the
9 statistics and further fails to establish foundation, and fails to identify or provide
10 source data, for the statistics themselves.

11 In addition, the referenced statistics are contradicted by OCSC business
12 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary
13 injunction and summary judgment papers, which data underlies OCSC’s calculations
14 regarding when new civil unlimited complaints are made public relative to receipt.
15 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”
16 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa
17 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While
18 CNS argues that OCSC’s calculations are a mischaracterization because they are
19 based on business hours, CNS does not dispute the accuracy of the actual numbers.
20 *See* ECF No. 83, Opp., 15:1-16:14.

21 In addition, Mr. Girdner’s assertion is rendered irrelevant as a matter of fact
22 by CNS’s repeated admission in its evidentiary objections to OCSC’s summary
23 judgment motion that, “Courthouse News Service is not requesting that the OCSC
24 identify and promptly publish only ‘newsworthy’ complaints; it is asking that OCSC
25 make all complaints available the same day they are submitted by the filer.” ECF
26 No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS’s focus on
27 civil complex complaints is irrelevant and can only be intended to confuse or mislead
28 the Court, and is therefore prejudicial.

1 Finally, Mr. Girdner's opinion as to what does or does not constitute "timely
2 access" is an inadmissible legal conclusion.

3 **OBJECTION NO. 28:**

4 "I understand that Mr. Yamasaki distinguishes the Judge Otero's ruling in the
5 Planet case by saying Ventura sees a much lower volume of complaints than does
6 OCSC." (ECF No. 86, Girdner Decl. ¶ 138., 64:23-25.)

7 **GROUND FOR OBJECTION NO. 28:**

8 **Lack of foundation as to personal knowledge; inadmissible hearsay.** Fed.
9 R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

10 Mr. Girdner fails to establish foundation for his purported knowledge of Mr.
11 Yamasaki's thoughts and opinions regarding the *Planet* case. And to the extent Mr.
12 Girdner offers Mr. Yamasaki's out-of-court statements regarding the Planet case,
13 offered for the truth of the matter asserted, that constitutes inadmissible hearsay.
14 See Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary
15 purpose is to prove a fact asserted, and such purpose is not approved under Evid. R.
16 801(d), then the hearsay objection should be sustained.").

17 **OBJECTION NO. 29:**

18 "But a small coterie of clerks primarily in Southern California does not see it
19 that way. Operating under the flag of new technology. they have blocked timely
20 access by news reporters. Their determination to withhold press access has persisted
21 in the face of two Ninth Circuit opinions and three district court opinions, one from
22 a California district court, in large part because they are protected from any
23 consequence by the financial backing of an opaque central bureaucracy which. in a
24 demonstration of power and insularity, is using public funds to fight against-public
25 access." (ECF No. 86, Girdner Decl. ¶ 142, 66:6-13.)

26 **GROUND FOR OBJECTION NO. 29:**

27 **Lack of foundation as to personal knowledge; inadmissible hearsay;**
28 **improper legal conclusion.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid.

1 801, 802.

2 Mr. Girdner fails to establish foundation for his assertions regarding the
3 purported views and “determination” of court clerks in Southern California. Mr.
4 Girdner further fails to establish foundation for his assertion regarding their
5 “financial backing.” He also fails to establish foundation for his assertion regarding
6 the “bureaucracy[’s]” use of “public funds” and related intent.

7 To the extent Mr. Girdner purports to relay out-of-court statements of the
8 clerks, for the truth of the matters asserted, that constitutes inadmissible hearsay.
9 *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If the evidentiary
10 purpose is to prove a fact asserted, and such purpose is not approved under Evid. R.
11 801(d), then the hearsay objection should be sustained.”).

12 Mr. Girdner also purports to state inadmissible legal conclusions regarding
13 whether “timely access” has been or is being provided.

14 **II. OBJECTIONS TO DEPOSITION OF JOANNA MENDOZA**

15 **OBJECTION NO. 30:**

16 “I understand from my editor, William Girdner, that before I began covering
17 OSC, the court provided access to newly filed civil unlimited complaints, which were
18 at that time filed in paper form, by placing the complaints in a box, which members
19 of the media would access in the records area at the end of each court day.” (ECF
20 No. 88, Declaration of Joanna Mendoza (“Mendoza Decl.”) ¶ 5, 1:24-27.)

21 **GROUND FOR OBJECTION NO. 30:**

22 **Lack of foundation as to personal knowledge; inadmissible hearsay.** Fed.
23 R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

24 Ms. Mendoza fails to establish foundation for her personal knowledge
25 regarding the matters stated; she purports merely to rely comments from Mr.
26 Girdner. Accordingly, because Ms. Mendoza purports to offer Mr. Girdner’s out-
27 of-court statements for the truth of the matters asserted, that also constitutes
28

1 inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5
2 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not
3 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

4 **OBJECTION NO. 31:**

5 “A court security guard in the complex building has informed me that I am not
6 permitted to use the terminal for more than a short period of time because it is
7 regularly used by members of the public. He also told me that court security officers
8 clear the area where the terminal is located shortly after 4:00 each day.” (ECF No.
9 88, Mendoza Decl. ¶ 11, 3:27-4:2.)

10 **GROUND FOR OBJECTION NO. 31:**

11 **Inadmissible hearsay; contradicted by evidence.** Fed. R. Evid. 801, 802.

12 Ms. Mendoza offers the security guard’s purported out-of-court statements
13 for the truth of the matters asserted, constituting inadmissible hearsay. *See* Fed. R.
14 Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If the evidentiary purpose is to
15 prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then
16 the hearsay objection should be sustained.”). Such statements are also contradicted
17 by Mr. Wertheimer’s reply declaration. Wertheimer Decl. ISO Reply ¶¶ 5-7.

18 **OBJECTION NO. 32:**

19 “They are also the complaints that are withheld from public review for the
20 greatest amount of time.” (ECF No. 88, Mendoza Decl. ¶ 13, 4:16-17.)

21 **GROUND FOR OBJECTION NO. 32:**

22 **Inadmissible hearsay; contradicted by evidence; irrelevant; prejudicial.**

23 Fed. R. Evid. 801, 802; Fed. R. Evid. 401, 402, 403.

24 Ms. Mendoza fails to establish any foundation whatsoever for the cited
25 calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation
26 for how she or her CNS team arrived at these numbers, fails to establish any
27 foundation for her purported personal knowledge of the qualitative conclusions, and
28 further fails to identify or provide source data for the calculation itself.

1 In addition, the referenced statistics are contradicted by OCSC business
2 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary
3 injunction and summary judgment papers, which data underlies OCSC’s calculations
4 regarding when new civil unlimited complaints are made public relative to receipt.
5 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”
6 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa
7 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While
8 CNS argues that OCSC’s calculations are a mischaracterization because they are
9 based on business hours, CNS does not dispute the accuracy of the actual numbers.
10 *See* ECF No. 83, Opp., 15:1-16:14.

11 Ms. Mendoza also fails to establish foundation or relevance for her focus on
12 civil complex actions. Indeed, this assertion is rendered irrelevant as a matter of fact
13 by CNS’s repeated admission in its evidentiary objections to OCSC’s summary
14 judgment motion that, “Courthouse News Service is not requesting that the OCSC
15 identify and promptly publish only ‘newsworthy’ complaints; it is asking that OCSC
16 make all complaints available the same day they are submitted by the filer.” ECF
17 No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS’s focus on
18 civil complex complaints is irrelevant and can only be intended to confuse or mislead
19 the Court, and is therefore prejudicial.

20 **OBJECTION NO. 33:**

21 “For purposes of analyzing the OCSC Turnaround Reports to measure the
22 actual delays experienced by CNS, I treated new civil complaints processed after 4
23 p.m. on a given day as having been made available on the next day the court was
24 open, because that would have been the first opportunity anyone would have to see
25 the complaint without paying a viewing fee of between \$7.50 and \$40. For purposes
26 of my analysis, I counted new civil complaints received on weekends and holidays
27 as being received on the next court day, which I understand is consistent with court
28 rules.” (ECF No. 88, Mendoza Decl. ¶ 24, 4:8-15.)

GROUND FOR OBJECTION NO. 33:

Contradicted by evidence; incomplete, misleading, and prejudicial. Fed. R. Evid. 403.

Ms. Mendoza's self-serving attempt to mischaracterize OCSC's "Turnaround Reports" by calculating "new civil complaints processed after 4 p.m. on a given day as having been made available on the next day the court was open," is contrary to the undisputed evidence (the "Turnaround Reports" themselves) and ignores that all complaints made available on the public docket are available 24 hours a day through the internet, a fact that Ms. Mendoza concedes. *See* ECF No. 88, Mendoza Decl. ¶ 46. That Ms. Mendoza apparently prefers not to access complaints that way is neither relevant nor does it constitute good cause to mischaracterize the results to make it seem like complaints are being made available later than they really are.

Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC's calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers with false criteria can only be intended confuse and mislead the Court, and is therefore prejudicial.

OBJECTION NO. 34:

"The results of my analysis of the OCSC Turnaround Reports for all new civil complaints filed between Jan. 1, 2017 and Oct. 18, 2017 is reflected in the attached Exhibit 5. This summary in Exhibit 5 reflects that the same data OCSC used to calculate its assertion that 95.97% of unlimited civil complaints filed between Jan. 1, 2017 to Oct. 18, 2017 were "published" within eight "business hours," shows that I was not able to see more than half (56.9%) of them on the day the court received them for filing. OCSC withheld 45.8% of the civil unlimited cases for one day, and

1 withheld another 11.1% for two to thirteen days.” (ECF No. 88, Mendoza Decl. ¶ 25,
2 8:16-23.)

3 **GROUND FOR OBJECTION NO. 34:**

4 **Lack of foundation as to personal knowledge; contradicted by evidence;**
5 **incomplete, misleading, and prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid.
6 701; Fed. R. Evid. 403.

7 Ms. Mendoza fails to establish foundation for the cited statistics and further
8 fails to provide her calculations.

9 In addition, Ms. Mendoza’s self-serving attempt to mischaracterize OCSC’s
10 “Turnaround Reports” by calculating “new civil complaints processed after 4 p.m.
11 on a given day as having been made available on the next day the court was open,”
12 is contrary to the undisputed evidence (the “Turnaround Reports” themselves) and
13 ignores that all complaints made available on the public docket are available to the
14 public 24 hours a day through the internet, a fact that Ms. Mendoza concedes. *See*
15 ECF No. 88, Mendoza Decl. ¶ 46. That Ms. Mendoza apparently prefers not to access
16 complaints that way is neither relevant nor does it constitute good cause to
17 mischaracterize the results to make it seem like complaints are being made available
18 later than they really are.

19 Significantly, CNS does not contest the data contained in the “Turnaround
20 Reports,” and does not dispute the accuracy of OCSC’s calculations. *See* ECF No.
21 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-
22 12. While CNS argues that OCSC’s calculations are a mischaracterization because
23 they are based on business hours, CNS does not dispute the accuracy of the actual
24 numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS’s attempt to re-calculate these
25 numbers with false criteria can only be intended to confuse and mislead the Court,
26 and is therefore prejudicial.

27 **OBJECTION NO. 35:**

28 “Also reflected in Exhibit 5 is the fact that the OCSC Turnaround Reports

1 show that access in some weeks was especially bad. Of the civil unlimited complaints
2 filed the week of July 17 - 23, for example, 91.6% were withheld until at least the
3 following court day after they were received for filing.” (ECF No. 88, Mendoza Decl.
4 ¶ 26, 8:24-27.)

5 **GROUND FOR OBJECTION NO. 35:**

6 **Lack of foundation as to personal knowledge; contradicted by evidence;**
7 **incomplete, misleading, and prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid.
8 701; Fed. R. Evid. 403.

9 Ms. Mendoza fails to establish any foundation whatsoever for the cited
10 calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation
11 for how she or her CNS team arrived at these numbers, fails to establish any
12 foundation for her purported personal knowledge of the qualitative conclusions, and
13 further fails to identify or provide source data for the calculation itself.

14 In addition, Ms. Mendoza’s self-serving attempt to mischaracterize OCSC’s
15 “Turnaround Reports” by calculating “new civil complaints processed after 4 p.m.
16 on a given day as having been made available on the next day the court was open,”
17 is contrary to the undisputed evidence (the “Turnaround Reports” themselves) and
18 ignores that all complaints made available on the public docket are available 24 hours
19 a day through the internet, a fact that Ms. Mendoza concedes. *See* ECF No. 88,
20 Mendoza Decl. ¶ 46. That Ms. Mendoza apparently prefers not to access complaints
21 that way is neither relevant nor does it constitute good cause to mischaracterize the
22 results to make it seem like complaints are being made available later than they really
23 are.

24 Significantly, CNS does not contest the data contained in the “Turnaround
25 Reports,” and does not dispute the accuracy of OCSC’s calculations. *See* ECF No.
26 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-
27 12. While CNS argues that OCSC’s calculations are a mischaracterization because
28 they are based on business hours, CNS does not dispute the accuracy of the actual

1 numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these
2 numbers with false criteria can only be intended to confuse and mislead the Court,
3 and is therefore prejudicial.

4 **OBJECTION NO. 36:**

5 ECF No. 88, Exhibit 5 to Mendoza Decl. (pp. 96-99).

6 **GROUND FOR OBJECTION NO. 36:**

7 **Lack of foundation as to personal knowledge; contradicted by evidence;**
8 **incomplete, misleading, and prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid.
9 701; Fed. R. Evid. 403.

10 Ms. Mendoza fails to establish any foundation whatsoever for the cited
11 calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation
12 for how she or her CNS team arrived at these numbers, fails to establish any
13 foundation for her purported personal knowledge of the qualitative conclusions, and
14 further fails to identify or provide source data for the calculation itself.

15 Significantly, CNS does not contest the data contained in the "Turnaround
16 Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No.
17 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-
18 12. While CNS argues that OCSC's calculations are a mischaracterization because
19 they are based on business hours, CNS does not dispute the accuracy of the actual
20 numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these
21 numbers with false criteria can only be intended to confuse and mislead the Court,
22 and is therefore prejudicial.

23 **OBJECTION NO. 37:**

24 "Through an analysis of OCSC's data for January 1, 2017 -October 18, 2017,
25 supplemented by information from the Register of Actions and payment receipts for
26 cases filed from October 19, 2017 - December 19, 2017, I noted the following
27 elements associated with the filing, processing and public availability of a complex
28 complaint: (1) filing date; (2) case number with the complex suffix CXC; (3) date

1 and time on which the complaint was received; (4) date and time on which the
2 complex complaint was processed (from October 19 through December 29, time of
3 processing is based on payment receipts and is unavailable for complaints filed with
4 fee waivers, which are listed in the summary with a date and an asterisk); and (5)
5 delay between when the complaint was received and the processing time, which
6 serves as a reliable indicator of when the complaint first becomes available for
7 viewing. In preparing this summary, I excluded cases with a "CXC" designation that
8 were assigned to Judge Bauer because he is a non-complex judge and it appears those
9 cases received the CXC suffix only because Judge Bauer's courtroom is located in
10 the complex building. The summary also excludes a small number of cases that were
11 misfiled as complex, but are not complex cases per the Register of Actions.” (ECF
12 No. 88, Mendoza Decl. ¶ 29, 9:18-10:5.)

13 **GROUND FOR OBJECTION NO. 37:**

14 **Lack of foundation as to personal knowledge; irrelevant; prejudicial.** Fed.
15 R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

16 Ms. Mendoza fails to establish foundation for her assertions regarding (1)
17 Judge Bauer’s supposed assignment; (2) “cases that were misfiled as complex”; and
18 (3) the additional information with which she purported supplemented OCSC’s
19 “Turnaround Reports,” which information she also fails to identify or provide.

20 In addition, Ms. Mendoza’s focus on civil complex cases is rendered irrelevant
21 as a matter of fact by CNS’s repeated admission in its evidentiary objections to
22 OCSC’s summary judgment motion that, “Courthouse News Service is not
23 requesting that the OCSC identify and promptly publish only ‘newsworthy’ or
24 complex complaints; it is asking that OCSC make all complaints available the same
25 day they are submitted by the filer.” ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,
26 12:12-15. As a result, Ms. Mendoza’s focus on civil complex complaints is irrelevant
27 and can only be intended to confuse or mislead the Court, and is therefore prejudicial.
28

OBJECTION NO. 38:

“Exhibit 6 shows that on the day they were filed I was not able to see more than three-quarters (78%) of the 488 complex civil unlimited complaints filed between January 1, 2017 and December 29, 2017. The court withheld more than one third (39.5%) of the complex civil unlimited cases for one day. The court withheld more- than another third (38.5%) for two to seven days. The average delay for all these complex cases was 1.7 days beyond the day they were received by OCSC.” (ECF No. 88, Mendoza Decl. ¶ 31, 10:11-16.)

GROUND FOR OBJECTION NO. 38:

Lack of foundation as to personal knowledge; contradicted by the evidence; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Ms. Mendoza fails to establish foundation for her assertions regarding (1) Judge Bauer’s supposed assignment; (2) “cases that were misfiled as complex”; and (3) the additional information with which she purported supplemented OCSC’s “Turnaround Reports” , which information she also fails to identify or provide.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary injunction and summary judgment papers, which data underlies OCSC’s calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the “Turnaround Reports,” and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While CNS argues that OCSC’s calculations are a mischaracterization because they are based on business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS’s attempt to re-calculate these numbers with false criteria can only be intended to confuse and mislead the Court, and is therefore prejudicial.

1 In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant
2 as a matter of fact by CNS's repeated admission in its evidentiary objections to
3 OCSC's summary judgment motion that, "Courthouse News Service is not
4 requesting that the OCSC identify and promptly publish only 'newsworthy' or
5 complex complaints; it is asking that OCSC make all complaints available the same
6 day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,
7 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant
8 and can only be intended to confuse or mislead the Court, and is therefore also
9 prejudicial.

10 **OBJECTION NO. 39:**

11 ECF No. 88, Exhibit 6 to Mendoza Decl. (pp. 100-116).

12 **GROUND FOR OBJECTION NO. 39:**

13 **Lack of foundation as to personal knowledge; contradicted by the**
14 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.
15 R. Evid. 401, 402, 403.

16 Ms. Mendoza fails to establish any foundation whatsoever for the cited
17 calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation
18 for how she or her CNS team arrived at these numbers, fails to establish any
19 foundation for her purported personal knowledge of the qualitative conclusions, and
20 further fails to identify or provide source data for the calculation itself.

21 Further, the referenced statistics are contradicted by OCSC business records,
22 specifically the "Turnaround Reports" submitted with OCSC's preliminary
23 injunction and summary judgment papers, which data underlies OCSC's calculations
24 regarding when new civil unlimited complaints are made public relative to receipt.
25 Significantly, CNS does not contest the data contained in the "Turnaround Reports,"
26 and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa
27 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While
28 CNS argues that OCSC's calculations are a mischaracterization because they are

1 based on business hours, CNS does not dispute the accuracy of the actual numbers.
2 *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers
3 with false criteria can only be intended to confuse and mislead the Court, and is
4 therefore prejudicial.

5 In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant
6 as a matter of fact by CNS's repeated admission in its evidentiary objections to
7 OCSC's summary judgment motion that, "Courthouse News Service is not
8 requesting that the OCSC identify and promptly publish only 'newsworthy or
9 complex complaints; it is asking that OCSC make all complaints available the same
10 day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,
11 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant
12 and can only be intended to confuse or mislead the Court, and is therefore also
13 prejudicial.

14 **OBJECTION NO. 40:**

15 "Within the last group of complaints that were delayed from two to seven days,
16 the court withheld 29.3% of those complex civil unlimited complaints for three days
17 or more, and it withheld 13.7% of the complex civil unlimited complaints for four
18 days or more. The average delay for the complex civil unlimited cases falling within
19 this group was 3.4 days beyond the day they were received by OCSC." (ECF No. 88,
20 Mendoza Decl. ¶ 32. 10:17-21.)

21 **GROUND FOR OBJECTION NO. 40:**

22 **Lack of foundation as to personal knowledge; contradicted by the**
23 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.
24 R. Evid. 401, 402, 403.

25 Ms. Mendoza fails to establish foundation for her assertions regarding 1) Judge
26 Bauer's supposed assignment; 2) "cases that were misfiled as complex;" and 3) the
27 additional information with which she purported supplemented OCSC's
28 "Turnaround Reports", which information she also fails to identify or provide.

1 In addition, the referenced statistics are contradicted by OCSC business
2 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary
3 injunction and summary judgment papers, which data underlies OCSC’s calculations
4 regarding when new civil unlimited complaints are made public relative to receipt.
5 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”
6 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa
7 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While
8 CNS argues that OCSC’s calculations are a mischaracterization because they are
9 based on business hours, CNS does not dispute the accuracy of the actual numbers.
10 *See* ECF No. 83, Opp., 15:1-16:14. CNS’s attempt to re-calculate these numbers
11 with false criteria can only be intended to confuse and mislead the Court, and is
12 therefore prejudicial.

13 In addition, Ms. Mendoza’s focus on civil complex cases is rendered irrelevant
14 as a matter of fact by CNS’s repeated admission in its evidentiary objections to
15 OCSC’s summary judgment motion that, “Courthouse News Service is not
16 requesting that the OCSC identify and promptly publish only “newsworthy” or
17 complex complaints; it is asking that OCSC make all complaints available the same
18 day they are submitted by the filer.” ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,
19 12:12-15. As a result, Ms. Mendoza’s focus on civil complex complaints is irrelevant
20 and can only be intended to confuse or mislead the Court, and is therefore also
21 prejudicial.

22 **OBJECTION NO. 41:**

23 “The unavailability of the complex civil complaints for between one to seven
24 days after filing has...” (ECF No. 88, Mendoza Decl. ¶ 33, 10:22-23.)

25 **GROUND FOR OBJECTION NO. 41:**

26 **Lack of foundation as to personal knowledge; contradicted by the**
27 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.
28 R. Evid. 401, 402, 403.

1 Ms. Mendoza fails to establish foundation for her assertions regarding 1) Judge
2 Bauer's supposed assignment; 2) "cases that were misfiled as complex;" and 3) the
3 additional information with which she purported supplemented OCSC's
4 "Turnaround Reports", which information she also fails to identify or provide.

5 In addition, the referenced statistics are contradicted by OCSC business
6 records, specifically the "Turnaround Reports" submitted with OCSC's preliminary
7 injunction and summary judgment papers, which data underlies OCSC's calculations
8 regarding when new civil unlimited complaints are made public relative to receipt.
9 Significantly, CNS does not contest the data contained in the "Turnaround Reports,"
10 and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa
11 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While
12 CNS argues that OCSC's calculations are a mischaracterization because they are
13 based on business hours, CNS does not dispute the accuracy of the actual numbers.
14 *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers
15 with false criteria can only be intended to confuse and mislead the Court, and is
16 therefore prejudicial.

17 In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant
18 as a matter of fact by CNS's repeated admission in its evidentiary objections to
19 OCSC's summary judgment motion that, "Courthouse News Service is not
20 requesting that the OCSC identify and promptly publish only 'newsworthy or
21 complex complaints; it is asking that OCSC make all complaints available the same
22 day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,
23 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant
24 and can only be intended to confuse or mislead the Court, and is therefore also
25 prejudicial.

26 **OBJECTION NO. 42:**

27 "The delays that naturally result from OCSC's practice of withholding
28 complaints until after processing..." (ECF No. 88, Mendoza Decl. ¶ 45, 14:15-16.)

GROUND FOR OBJECTION NO. 42:

Lack of foundation as to personal knowledge; contradicted by the evidence. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Ms. Mendoza fails to establish foundation for her assertion of OCSC's purported "practice of withholding complaints until after processing." Moreover, this assertion is contradicted by the declarations of Sara Ochoa and Debbie Kruse submitted with OCSC's moving papers, both of which make clear that OCSC's LPSs review all civil unlimited complaints in the order received and as quickly as possible. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 25-27; ECF No. 75-3, Kruse Decl. ¶¶ 8-10. OCSC does not withhold anything.

OBJECTION NO. 43:

"...for the complex cases in 2017, took up to seven days." (ECF No. 88, Mendoza Decl. ¶ 46, 15:4-5.)

GROUND FOR OBJECTION NO. 43:

Lack of foundation as to personal knowledge; contradicted by the evidence; irrelevant; prejudicial. Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

Ms. Mendoza fails to establish foundation for her assertions regarding 1) Judge Bauer's supposed assignment; 2) "cases that were misfiled as complex;" and 3) the additional information with which she purported supplemented OCSC's "Turnaround Reports", which information she also fails to identify or provide.

In addition, the referenced statistics are contradicted by OCSC business records, specifically the "Turnaround Reports" submitted with OCSC's preliminary injunction and summary judgment papers, which data underlies OCSC's calculations regarding when new civil unlimited complaints are made public relative to receipt. Significantly, CNS does not contest the data contained in the "Turnaround Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While

1 CNS argues that OCSC's calculations are a mischaracterization because they are
2 based on business hours, CNS does not dispute the accuracy of the actual numbers.
3 See ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers
4 with false criteria can only be intended to confuse and mislead the Court, and is
5 therefore prejudicial.

6 In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant
7 as a matter of fact by CNS's repeated admission in its evidentiary objections to
8 OCSC's summary judgment motion that, "Courthouse News Service is not
9 requesting that the OCSC identify and promptly publish only 'newsworthy' or
10 complex complaints; it is asking that OCSC make all complaints available the same
11 day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,
12 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant
13 and can only be intended to confuse or mislead the Court, and is therefore also
14 prejudicial.

15 **OBJECTION NO. 44:**

16 "OCSC provides *Orange County Register* reporters with a dedicated working
17 room across the hall from the Records Area." (ECF No. 88, Mendoza Decl. ¶ 47,
18 15:6-7.)

19 **GROUND FOR OBJECTION NO. 44:**

20 **Lack of foundation as to personal knowledge; contradicted by the**
21 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701..

22 Ms. Mendoza fails to establish foundation for her purported knowledge
23 regarding whether and how OCSC supposedly "provides Orange County Register
24 reporters with a dedicated working room across the hall from the Records Area."
25 This statement is also directly contradicted by the reply declaration of Jeff
26 Wertheimer in which Mr. Wertheimer describes how the State of California owns the
27 building that houses OCSC's Central Justice Center, and how the State – not OCSC
28 – leases space in the building to each of the tenants in the building, including the

1 Orange County Register. Wertheimer Decl. ISO Reply ¶ 2. This statement is further
2 contradicted by David Yamasaki's deposition testimony to the same effect.
3 Declaration Cary D. Sullivan In Support of Reply ("Sullivan Decl. ISO Reply") ¶ 7;
4 Ex. E, Yamasaki Depo., 114:16-21.

5 **OBJECTION NO. 45:**

6 "...understand from *Register* reporters that they are permitted to work in that
7 room as late as they wish after the court closes to the general public at 5 p.m." (ECF
8 No. 88, Mendoza Decl. ¶ 47, 15:8-10.)

9 **GROUND FOR OBJECTION NO. 45:**

10 **Inadmissible hearsay; irrelevant.** Fed. R. Evid. 801, 802; Fed. R. Evid. 401,
11 402.

12 Ms. Mendoza purports to relay comments from Orange County Register
13 reporters regarding whether they are permitted to work late in the room that The
14 Register leases from the State of California. Because the comments are being offered
15 for the truth of the matter asserted, they constitute inadmissible hearsay.

16 In addition, because the State of California owns the building that houses
17 OCSC's Central Justice Center, and because the State – not OCSC – leases space in
18 the building to each of the tenants in the building, including the Orange County
19 Register, Wertheimer Decl. ISO Reply ¶ 2; Sullivan Decl. ISO Reply ¶ 7, Ex. E,
20 Yamasaki Depo., 114:16-21, whether and how The Register's reporters use The
21 Register's privately leased space is irrelevant as a matter of fact.

22 **III. OBJECTIONS TO DEPOSITION OF CRAIG ROSENBERG, Ph.D.**

23
24 **OBJECTION NO. 46:**

25 "Based on my review of that material and my experience, I am of the opinion
26 that the method that the Orange County Superior Court ("OCSC") currently uses to
27 secure the confidentiality of complaints that are conditionally sealed (i.e., filed with
28 a motion or a request to seal) or required to be kept confidential by statute is not

1 optimal and could be improved quickly and easily by OCSC programmers, while at
2 the same time allowing the public to have access to non-confidential complaints as
3 soon as the complaints are electronically received by OCSC and before manual clerk
4 review.” (ECF No. 89, Declaration of Craig Rosenberg (“Rosenberg Decl. ”) ¶ 5,
5 3:10-17.)

6 **GROUND FOR OBJECTION NO. 46:**

7 **Lack of foundation; improper expert opinion; lack of reliability; failure**
8 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

9 Dr. Rosenberg fails to establish foundation for his purported knowledge of (1)
10 OCSC’s CCMS; (2) “the method that [OCSC] currently uses to secure the
11 confidentiality of complaints that are conditionally sealed ... or required to be kept
12 confidential by statute”; and (3) whether and how CCMS “could be improved quickly
13 and easily by OCSC programmers.” Dr. Rosenberg does not profess to have any
14 knowledge of or familiarity with CCMS – because he has none – and thus cannot
15 know its technological capabilities, functionality, and/or possibilities.

16 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg’s CV
17 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in “Human
18 Factors,” and describes himself as “[a]n accomplished human factors engineer ...
19 specializing in analysis and design of mobile computing devices, complex systems,
20 user centered design, information architecture, user experience....” ECF No. 89,
21 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any
22 background or expertise in computer programming generally or in the programming
23 or creation of court case management systems specifically.

24 As a result, Dr. Rosenberg is not qualified to opine as to CCMS’s capabilities
25 and functionality, nor is he qualified to opine as to what may or may not be possible
26 with respect to re-programming the system to add new features or functions. *See*
27 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); *see also Kumho Tire*
28 *Co., Ltd. v. Carmichael*, 526 US 137 (1999); *Avila v. Willits Envntl. Remediation Tr.*,

1 633 F.3d 828, 839 (9th Cir. 2011) (courts properly exclude expert testimony where
2 expert offers opinions outside area of expertise).¹

3 Furthermore, Dr. Rosenberg’s opinions on these matters should be excluded
4 because they are not “reliable,” as required for the admission of scientific expert
5 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate
6 personal knowledge of OCSC’s computer systems or that his opinions are based on
7 scientific foundations. *See Morrison v. Quest Diagnostics Inc.*, 2016 WL 3457725,
8 at *3–4 (D. Nev. June 23, 2016) (reliability may be shown by personal knowledge or
9 scientific basis). And “[a]n opinion based on ... unsubstantiated and undocumented
10 information is the antithesis of the scientifically reliable expert opinion admissible
11 under *Daubert* and Rule 702.” *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1423 (9th
12 Cir. 1998). Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning
13 underlying his opinions. That is fatal. An expert must, at minimum, provide the
14 basis for his scientific conclusions. *See, e.g., Diviero v. Uniroyal Goodrich Tire Co.*,
15 114 F.3d 851, 853 (9th Cir. 1997). If he does not, courts rightly disregard the
16 opinions offered as “unsubstantiated and subjective, and therefore unreliable and
17 inadmissible.” *Id.* That is the proper course here.

18 Finally, Dr. Rosenberg’s opinions on these matters should be excluded because
19 he failed to provide the necessary written disclosures under Federal Rule of Civil
20 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have
21 applied them when an expert’s testimony is offered to the court in connection with
22 summary judgment motions, reasoning that in such situations, the expert has ‘entered
23 the judicial arena.’” *S. Yuba River Citizens League v. Nat’l Marine Fisheries Serv.*,
24 257 F.R.D. 607, 611 (E.D. Cal. 2009). Here, Dr. Rosenberg has not disclosed what
25 Rule 26 requires, which includes “the facts or data considered by the witness in
26

27 ¹ The current summary judgment briefing schedule does not allow sufficient
28 time for Yamasaki to formally notice a motion to exclude Dr. Rosenberg’s
testimony under *Daubert* prior to the scheduled hearing. Yamasaki reserves the
right to notice such a motion at a future date.

forming” his opinion; a list of prior cases in which the witness has served as an expert witness; and the witness’s compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s declaration provides no detail regarding the facts or data he considered in forming his various conclusions. And a report that describes “none of the underlying data or observations” relied on by the expert is deficient. *Taser Int’l, Inc. v. Bestex Co.*, 2007 WL 2947564, at *8-9 (C.D. Cal. Feb. 9, 2007). Because Dr. Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was never given the opportunity to probe the basis of his views, including by deposition. Exclusion of his testimony is therefore warranted. *See, e.g., id.* at *8-9 (excluding expert testimony where the defendant was rendered unable to effectively respond to testimony because of party’s failure to disclose); *Colony Holdings, Inc. v. Texaco Ref. & Mktg., Inc.*, 2001 WL 1398403, at *6 (C.D. Cal. Oct. 29, 2001) (excluding testimony because expert “was not disclosed as an expert witness, no expert report was prepared and produced, and Defendants did not have the opportunity to depose and examine [the expert] regarding the reliability of his opinions”).

OBJECTION NO. 47:

“Given these facts, it would be more efficient and less prone to errors for the Court to modify its e-filing system so that the e-filers themselves would be required to check a single box or select one of two radio buttons (that would be functionally equivalent to the check box) to indicate that the filing contains confidential information.” (ECF No. 89, Rosenberg Decl. ¶ 7, 4:1-5.)

GROUND FOR OBJECTION NO. 47:

Lack of foundation; improper expert opinion; lack of reliability; failure to submit expert disclosures. Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

Dr. Rosenberg fails to establish foundation for his purported knowledge of (1) OCSC’s CCMS; (2) the functionality of CCMS with respect to designation of confidential complaints or complaints that are to be sealed; and (3) whether and how

1 CCMS could be re-programmed or upgraded by OCSC programmers. Dr. Rosenberg
2 does not profess to have any knowledge of or familiarity with CCMS – because he
3 has none – and thus cannot know its technological capabilities, functionality, and/or
4 possibilities.

5 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg’s CV
6 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in “Human
7 Factors,” and describes himself as “[a]n accomplished human factors engineer ...
8 specializing in analysis and design of mobile computing devices, complex systems,
9 user centered design, information architecture, user experience....” ECF No. 89,
10 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any
11 background or expertise in computer programming generally or in the programming
12 or creation of court case management systems specifically.

13 As a result, Dr. Rosenberg is not qualified to opine as to CCMS’s capabilities
14 and functionality, nor is he qualified to opine as to what may or may not be possible
15 with respect to re-programming the system to add new features or functions. *See*
16 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839
17 (courts properly exclude expert testimony where expert offers opinions outside area
18 of expertise).

19 Furthermore, Dr. Rosenberg’s opinion on these matters should be excluded
20 because they are not “reliable,” as required for the admission of scientific expert
21 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate
22 personal knowledge of OCSC’s computer systems or that his opinions are based on
23 scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may
24 be shown by personal knowledge or scientific basis). And “[a]n opinion based on ...
25 unsubstantiated and undocumented information is the antithesis of the scientifically
26 reliable expert opinion admissible under *Daubert* and Rule 702.” *Cabrera*, 134 F.3d
27 at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning
28 underlying his opinions. That is fatal. An expert must, at minimum, provide the

1 basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853. If he does
2 not, courts rightly disregard the opinions offered as “unsubstantiated and subjective,
3 and therefore unreliable and inadmissible.” *Id.* That is the proper course here.

4 Dr. Rosenberg’s opinions on these matters should also be excluded because he
5 failed to provide the necessary written disclosures under Federal Rule of Civil
6 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have
7 applied them when an expert’s testimony is offered to the court in connection with
8 summary judgment motions, reasoning that in such situations, the expert has ‘entered
9 the judicial arena.’” *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.
10 Rosenberg has not disclosed what Rule 26 requires, which includes “the facts or data
11 considered by the witness in forming” his opinion; a list of prior cases in which the
12 witness has served as an expert witness; and the witness’s compensation. Fed. R.
13 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s declaration provides no
14 detail regarding the facts or data he considered in forming his various conclusions.
15 And a report that describes “none of the underlying data or observations” relied on
16 by the expert is deficient. *Taser Int’l*, 2007 WL 2947564, at *8-9. Because Dr.
17 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was
18 never given the opportunity to probe the basis of his views, including by deposition.
19 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at *8-9 (excluding
20 expert testimony where the defendant was rendered unable to effectively respond to
21 testimony because of party’s failure to disclose); *Colony Holdings*, 2001 WL
22 1398403, at *6 (excluding testimony because expert “was not disclosed as an expert
23 witness, no expert report was prepared and produced, and Defendants did not have
24 the opportunity to depose and examine [the expert] regarding the reliability of his
25 opinions”).

26 In addition, Dr. Rosenberg’s assertion that a check-box or push-button feature
27 would be “more efficient and less prone to errors” is based on a demonstrably false
28 premise – that filers always comply with filing requirements regarding confidential

1 complaints. OCSC has already establishes numerous examples where filers
2 disregarded an express requirement to note confidential treatment on the caption page
3 of a complaint. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles
4 with the exact number of these examples, CNS concedes that 13 confidential
5 complaints would have been made public but for LPS review. ECF No. 84, CNS
6 Response to OCSC SUF (“CNS Resp. to SUF”), ¶ 21. In other words, CNS concedes
7 the dispositive fact that, but for LPS review, more than a dozen confidential
8 complaints would have been made public. Consequently, because we know that
9 leaving the confidentiality determination to filers is not a failsafe approach, LPS
10 review would still be required for the Court to fulfill its obligation to do all it can to
11 ensure that complaints that are required by law to be kept confidential are not
12 accidentally made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-
13 2.577; Cal. Rs. Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc.
14 Code § 340.1(m); *Mao’s Kitchen, Inc. v. Mundy*, 209 Cal. App. 4th 132, 149 (2012);
15 Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶
16 30; ECF No. 75-3, Kruse Decl. ¶ 13.

17 **OBJECTION NO. 48:**

18 “OCSC's current procedure of relying on the LPS to review a text box for e-
19 filer comments and the face page of the complaint amplifies the potential for human
20 error. First, OCSC's current system requires the e-filer to remember to request
21 confidentiality where appropriate (either explicitly, or by referencing one of several
22 categories of confidential complaints by name or code section) rather than explicitly
23 requiring the e-filer to address the question of confidentiality. Second, an e-filer
24 entering comments into a free-form text box might not use the key words or code
25 section the LPS looks for to identify confidentiality. Third, even if thee-filer uses
26 these key terms, the LPS can overlook them despite their best diligence. At the same
27 time, the LPS review does nothing to improve the appropriate selection of a security
28 level because the reviewing LPS relies on the e-filer to designate a complaint as

1 "confidential," "secret," or conditionally "sealed" by using those words or referencing
2 one of several categories of confidential complaints by name or code section in the
3 comments box or on the complaint's face page." (ECF No. 89, Rosenberg Decl. ¶ 8,
4 4:23-5:9.)

5 **GROUND FOR OBJECTION NO. 48:**

6 **Lack of foundation; improper expert opinion; lack of reliability; failure**
7 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

8 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1)
9 OCSC's CCMS; and 2) the functionality of CCMS with respect to designation of
10 confidential complaints or complaints that are to be sealed. Dr. Rosenberg does not
11 profess to have any knowledge of or familiarity with CCMS – because he has none
12 – and thus cannot know its technological capabilities, functionality, and/or
13 possibilities.

14 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV
15 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human
16 Factors," and describes himself as "[a]n accomplished human factors engineer ...
17 specializing in analysis and design of mobile computing devices, complex systems,
18 user centered design, information architecture, user experience...." ECF No. 89,
19 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any
20 background or expertise in computer programming generally or in the programming
21 or creation of court case management systems specifically.

22 As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities
23 and functionality. *See Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137;
24 *Avila*, 633 F.3d at 839 (courts properly exclude expert testimony where expert offers
25 opinions outside area of expertise).

26 Furthermore, Dr. Rosenberg's opinion on these matters should be excluded
27 because they are not "reliable," as required for the admission of scientific expert
28 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate

1 personal knowledge of OCSC's computer systems or that his opinions are based on
2 scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may
3 be shown by personal knowledge or scientific basis). And “[a]n opinion based on ...
4 unsubstantiated and undocumented information is the antithesis of the scientifically
5 reliable expert opinion admissible under *Daubert* and Rule 702.” *Cabrera*, 134 F.3d
6 at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning
7 underlying his opinions. That is fatal. An expert must, at minimum, provide the
8 basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853. If he does
9 not, courts rightly disregard the opinions offered as “unsubstantiated and subjective,
10 and therefore unreliable and inadmissible.” *Id.* That is the proper course here.

11 Finally, Dr. Rosenberg's opinions on these matters should be excluded because
12 he failed to provide the necessary written disclosures under Federal Rule of Civil
13 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have
14 applied them when an expert's testimony is offered to the court in connection with
15 summary judgment motions, reasoning that in such situations, the expert has ‘entered
16 the judicial arena.’” *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.
17 Rosenberg has not disclosed what Rule 26 requires, which includes “the facts or data
18 considered by the witness in forming” his opinion; a list of prior cases in which the
19 witness has served as an expert witness; and the witness's compensation. Fed. R.
20 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no
21 detail regarding the facts or data he considered in forming his various conclusions.
22 And a report that describes “none of the underlying data or observations” relied on
23 by the expert is deficient. *Taser Int'l*, 2007 WL 2947564, at *8-9. Because Dr.
24 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was
25 never given the opportunity to probe the basis of his views, including by deposition.
26 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at *8-9 (excluding
27 expert testimony where the defendant was rendered unable to effectively respond to
28 testimony because of party's failure to disclose); *Colony Holdings*, 2001 WL

1 1398403, at *6 (excluding testimony because expert “was not disclosed as an expert
2 witness, no expert report was prepared and produced, and Defendants did not have
3 the opportunity to depose and examine [the expert] regarding the reliability of his
4 opinions”).

5 **OBJECTION NO. 49:**

6 “Additionally, providing the security level check box or radio buttons at the
7 user interface is a relatively simple and inexpensive task. I have read portions of
8 Mr. Yamasaki's deposition where he acknowledges that such a solution is clearly
9 possible and within the capacity of OCSC's Court Technology services department,
10 which is evidently currently working to upgrade OCSC's case management
11 system.” (ECF No. 89, Rosenberg Decl. ¶ 9, 5:10-14.)

12 **GROUND FOR OBJECTION NO. 49:**

13 **Lack of foundation; improper expert opinion; lack of reliability; failure**
14 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

15 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1)
16 OCSC's CCMS; 2) the functionality of CCMS with respect to designation of
17 confidential complaints or complaints that are to be sealed; and 3) whether and how
18 CCMS could be re-programmed or upgraded by OCSC programmers. Dr.
19 Rosenberg does not profess to have any knowledge of or familiarity with CCMS –
20 because he has none – and thus cannot know its technological capabilities,
21 functionality, and/or possibilities.

22 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV
23 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in “Human
24 Factors,” and describes himself as “[a]n accomplished human factors engineer ...
25 specializing in analysis and design of mobile computing devices, complex systems,
26 user centered design, information architecture, user experience....” ECF No. 89,
27 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any
28 background or expertise in computer programming generally or in the programming

1 or creation of court case management systems specifically.

2 As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities
3 and functionality, nor is he qualified to opine as to what may or may not be possible
4 with respect to re-programming the system to add new features or functions. *See*
5 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839
6 (courts properly exclude expert testimony where expert offers opinions outside area
7 of expertise).

8 Furthermore, Dr. Rosenberg's opinion on these matters should be excluded
9 because they are not "reliable," as required for the admission of scientific expert
10 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate
11 personal knowledge of OCSC's computer systems or that his opinions are based on
12 scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may
13 be shown by personal knowledge or scientific basis). And "[a]n opinion based
14 on ... unsubstantiated and undocumented information is the antithesis of the
15 scientifically reliable expert opinion admissible under *Daubert* and Rule 702."
16 *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of
17 the reasoning underlying his opinions. That is fatal. An expert must, at minimum,
18 provide the basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853.
19 If he does not, courts rightly disregard the opinions offered as "unsubstantiated and
20 subjective, and therefore unreliable and inadmissible." *Id.* That is the proper
21 course here.

22 Dr. Rosenberg's opinions on these matters should also be excluded because he
23 failed to provide the necessary written disclosures under Federal Rule of Civil
24 Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have
25 applied them when an expert's testimony is offered to the court in connection with
26 summary judgment motions, reasoning that in such situations, the expert has 'entered
27 the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.
28 Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data

1 considered by the witness in forming” his opinion; a list of prior cases in which the
2 witness has served as an expert witness; and the witness’s compensation. Fed. R.
3 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s declaration provides no
4 detail regarding the facts or data he considered in forming his various conclusions.
5 And a report that describes “none of the underlying data or observations” relied on
6 by the expert is deficient. *Taser Int’l*, 2007 WL 2947564, at *8-9. Because Dr.
7 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was
8 never given the opportunity to probe the basis of his views, including by deposition.
9 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at *8-9 (excluding
10 expert testimony where the defendant was rendered unable to effectively respond to
11 testimony because of party’s failure to disclose); *Colony Holdings*, 2001 WL
12 1398403, at *6 (excluding testimony because expert “was not disclosed as an expert
13 witness, no expert report was prepared and produced, and Defendants did not have
14 the opportunity to depose and examine [the expert] regarding the reliability of his
15 opinions”).

16 In addition, Dr. Rosenberg’s basic assertion that a check-box or push-button
17 feature would be better is based on a demonstrably false premise – that filers always
18 comply with filing requirements regarding confidential complaints. OCSC has
19 already established numerous examples where filers disregarded an express
20 requirement to note confidential treatment on the caption page of a complaint. *See*
21 ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact
22 number of these examples, CNS concedes that 13 confidential complaints would
23 have been made public but for LPS review. ECF No. 84, CNS Response to OCSC
24 SUF (“CNS Resp. to SUF”), ¶ 21. In other words, CNS concedes the dispositive fact
25 that, but for LPS review, more than a dozen confidential complaints would have been
26 made public. Consequently, because we know that leaving the confidentiality
27 determination to filers is not a failsafe approach, LPS review would still be required
28 for the Court to fulfill its obligation to do all it can to ensure that complaints that are

1 required by law to be kept confidential are not accidentally made public. Cal. Civ.
2 Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs. Ct. 2.571(e), 2.573(a);
3 Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code § 340.1(m); *Mao's Kitchen, Inc.*,
4 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF
5 No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3, Kruse Decl. ¶ 13.

6 **OBJECTION NO. 50:**

7 “None of these concerns should present an issue for implementing the
8 improved, safer, and more efficient user interface proposed above. First, thee-filing
9 system can easily assign a temporary case number or other identifier automatically
10 as soon as the complaint is e-fil~ and that number can subsequently be
11 automatically linked to and replaced by a permanent case number assigned by the
12 LPS at a later time. Programming these system upgrades is a relatively simple and
13 short task. Second, the Court can easily program its system to post a notice in the
14 initial public access screen that a complaint has not been officially accepted by the
15 Court and may be rejected for a variety of issues, such as non-payment of fees.
16 Programming these system upgrades is also a relatively simple and inexpensive
17 task.” (ECF No. 89, Rosenberg Decl. ¶ 11, 5:25-6:7.)

18 **GROUND FOR OBJECTION NO. 50:**

19 **Lack of foundation; improper expert opinion; lack of reliability; failure**
20 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

21 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1)
22 OCSC's CCMS; 2) the functionality of CCMS with respect to designation of
23 confidential complaints or complaints that are to be sealed; and 3) whether and how
24 CCMS could be re-programmed or upgraded by OCSC programmers. Dr.
25 Rosenberg does not profess to have any knowledge of or familiarity with CCMS –
26 because he has none – and thus cannot know its technological capabilities,
27 functionality, and/or possibilities.

28 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV

1 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in “Human
2 Factors,” and describes himself as “[a]n accomplished human factors engineer ...
3 specializing in analysis and design of mobile computing devices, complex systems,
4 user centered design, information architecture, user experience....” ECF No. 89,
5 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any
6 background or expertise in computer programming generally or in the programming
7 or creation of court case management systems specifically.

8 As a result, Dr. Rosenberg is not qualified to opine as to CCMS’s capabilities
9 and functionality, nor is he qualified to opine as to what may or may not be possible
10 with respect to re-programming the system to add new features or functions. *See*
11 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839
12 (courts properly exclude expert testimony where expert offers opinions outside area
13 of expertise).

14 Furthermore, Dr. Rosenberg’s opinion on these matters should be excluded
15 because they are not “reliable,” as required for the admission of scientific expert
16 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate
17 personal knowledge of OCSC’s computer systems or that his opinions are based on
18 scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may
19 be shown by personal knowledge or scientific basis). And “[a]n opinion based on ...
20 unsubstantiated and undocumented information is the antithesis of the scientifically
21 reliable expert opinion admissible under *Daubert* and Rule 702.” *Cabrera*, 134 F.3d
22 at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning
23 underlying his opinions. That is fatal. An expert must, at minimum, provide the
24 basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853. If he does
25 not, courts rightly disregard the opinions offered as “unsubstantiated and subjective,
26 and therefore unreliable and inadmissible.” *Id.* That is the proper course here.

27 Dr. Rosenberg’s opinions on these matters should also be excluded because he
28 failed to provide the necessary written disclosures under Federal Rule of Civil

1 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have
2 applied them when an expert’s testimony is offered to the court in connection with
3 summary judgment motions, reasoning that in such situations, the expert has ‘entered
4 the judicial arena.’” *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.
5 Rosenberg has not disclosed what Rule 26 requires, which includes “the facts or data
6 considered by the witness in forming” his opinion; a list of prior cases in which the
7 witness has served as an expert witness; and the witness’s compensation. Fed. R.
8 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s declaration provides no
9 detail regarding the facts or data he considered in forming his various conclusions.
10 And a report that describes “none of the underlying data or observations” relied on
11 by the expert is deficient. *Taser Int’l*, 2007 WL 2947564, at *8-9. Because Dr.
12 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was
13 never given the opportunity to probe the basis of his views, including by deposition.
14 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at *8-9 (excluding
15 expert testimony where the defendant was rendered unable to effectively respond to
16 testimony because of party’s failure to disclose); *Colony Holdings*, 2001 WL
17 1398403, at *6 (excluding testimony because expert “was not disclosed as an expert
18 witness, no expert report was prepared and produced, and Defendants did not have
19 the opportunity to depose and examine [the expert] regarding the reliability of his
20 opinions”).

21 In addition, Dr. Rosenberg’s assertion that a check-box or push-button
22 feature would be more efficient is based on a demonstrably false premise – that
23 filers always comply with filing requirements regarding confidential complaints.
24 OCSC has already established numerous examples where filers disregarded an
25 express requirement to note confidential treatment on the caption page of a
26 complaint. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles
27 with the exact number of these examples, CNS concedes that 13 confidential
28 complaints would have been made public but for LPS review. ECF No. 84, CNS

1 Response to OCSC SUF (“CNS Resp. to SUF”), ¶ 21. In other words, CNS
2 concedes the dispositive fact that, but for LPS review, more than a dozen
3 confidential complaints would have been made public. Consequently, because we
4 know that leaving the confidentiality determination to filers is not a failsafe
5 approach, LPS review would still be required for the Court to fulfill its obligation to
6 do all it can to ensure that complaints that are required by law to be kept
7 confidential are not accidentally made public. Cal. Civ. Proc. Code § 1277(b)(3);
8 Cal. Rs. Ct. 2.575-2.577; Cal. Rs. Ct. 2.571(e), 2.573(a); Cal. Ins. Code §
9 1871.7(e)(2); Cal. Civ. Proc. Code § 340.1(m); *Mao’s Kitchen, Inc.*, 209 Cal. App.
10 4th at 149; Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF No. 75-2,
11 Ochoa Decl. ¶ 30; ECF No. 75-3, Kruse Decl. ¶ 13.

12 **OBJECTION NO. 51:**

13 “Implementing this proposed system would not require the LPS to open up
14 the complaint twice. Access could be provided on receipt before the LPS reviews
15 the complaint, with the complaint only being opened once later as the LPS is able to
16 turn their attention to the complaint. If the LPS for some reason were to decide that
17 the initial designation of the case as "confidential" or "conditionally under seal" by
18 the e-filer was erroneous, the LPS could simply access the existing drop-down
19 security menu (as they currently do) and change the security level set in the system
20 from "2" to "1," and thereby trigger an automated notice to the e-filer that the
21 security level had been downgraded. Thus, the "single touch" approach favored by
22 Mr. Yamasaki, as reflected in the excerpts of his deposition transcripts that I
23 reviewed would be maintained.” (ECF No. 89, Rosenberg Decl. ¶ 12, 6:8-18.)

24 **GROUND FOR OBJECTION NO. 51:**

25 **Lack of foundation; improper expert opinion; lack of reliability; failure**
26 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

27 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1)
28 OCSC’s CCMS; 2) the functionality of CCMS with respect to designation of

1 confidential complaints or complaints that are to be sealed; and 3) whether and how
2 CCMS could be re-programmed or upgraded by OCSC programmers. Dr.
3 Rosenberg does not profess to have any knowledge of or familiarity with CCMS –
4 because he has none – and thus cannot know its technological capabilities,
5 functionality, and/or possibilities.

6 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg’s CV
7 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in “Human
8 Factors,” and describes himself as “[a]n accomplished human factors engineer ...
9 specializing in analysis and design of mobile computing devices, complex systems,
10 user centered design, information architecture, user experience....” ECF No. 89,
11 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any
12 background or expertise in computer programming generally or in the programming
13 or creation of court case management systems specifically.

14 As a result, Dr. Rosenberg is not qualified to opine as to CCMS’s capabilities
15 and functionality, nor is he qualified to opine as to what may or may not be possible
16 with respect to re-programming the system to add new features or functions. *See*
17 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839
18 (courts properly exclude expert testimony where expert offers opinions outside area
19 of expertise).

20 Furthermore, Dr. Rosenberg’s opinion on these matters should be excluded
21 because they are not “reliable,” as required for the admission of scientific expert
22 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate
23 personal knowledge of OCSC’s computer systems or that his opinions are based on
24 scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may
25 be shown by personal knowledge or scientific basis). And “[a]n opinion based on ...
26 unsubstantiated and undocumented information is the antithesis of the scientifically
27 reliable expert opinion admissible under *Daubert* and Rule 702.” *Cabrera*, 134 F.3d
28 at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning

1 underlying his opinions. That is fatal. An expert must, at minimum, provide the
2 basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853. If he does
3 not, courts rightly disregard the opinions offered as “unsubstantiated and subjective,
4 and therefore unreliable and inadmissible.” *Id.* That is the proper course here.

5 Dr. Rosenberg’s opinions on these matters should also be excluded because
6 he failed to provide the necessary written disclosures under Federal Rule of Civil
7 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have
8 applied them when an expert’s testimony is offered to the court in connection with
9 summary judgment motions, reasoning that in such situations, the expert has
10 ‘entered the judicial arena.’” *S. Yuba River Citizens League*, 257 F.R.D. at 611.
11 Here, Dr. Rosenberg has not disclosed what Rule 26 requires, which includes “the
12 facts or data considered by the witness in forming” his opinion; a list of prior cases
13 in which the witness has served as an expert witness; and the witness’s
14 compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s
15 declaration provides no detail regarding the facts or data he considered in forming
16 his various conclusions. And a report that describes “none of the underlying data or
17 observations” relied on by the expert is deficient. *Taser Int’l*, 2007 WL 2947564,
18 at *8-9. Because Dr. Rosenberg did not disclose what he was required to under
19 Rule 26, Yamasaki was never given the opportunity to probe the basis of his views,
20 including by deposition. Exclusion of his testimony is therefore warranted. *See,*
21 *e.g., id.* at *8-9 (excluding expert testimony where the defendant was rendered
22 unable to effectively respond to testimony because of party’s failure to disclose);
23 *Colony Holdings*, 2001 WL 1398403, at *6 (excluding testimony because expert
24 “was not disclosed as an expert witness, no expert report was prepared and
25 produced, and Defendants did not have the opportunity to depose and examine [the
26 expert] regarding the reliability of his opinions”).

27 In addition, Dr. Rosenberg’s basic assertion that a check-box or push-button
28 feature would be better is based on a demonstrably false premise – that filers

1 always comply with filing requirements regarding confidential complaints. OCSC
2 has already established numerous examples where filers disregarded an express
3 requirement to note confidential treatment on the caption page of a complaint. *See*
4 ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact
5 number of these examples, CNS concedes that 13 confidential complaints would
6 have been made public but for LPS review. ECF No. 84, CNS Response to OCSC
7 SUF (“CNS Resp. to SUF”), ¶ 21. In other words, CNS concedes the dispositive
8 fact that, but for LPS review, more than a dozen confidential complaints would
9 have been made public. Consequently, because we know that leaving the
10 confidentiality determination to filers is not a failsafe approach, LPS review would
11 still be required for the Court to fulfill its obligation to do all it can to ensure that
12 complaints that are required by law to be kept confidential are not accidentally
13 made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs.
14 Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code §
15 340.1(m); *Mao’s Kitchen, Inc.*, 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal.
16 Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3,
17 Kruse Decl. ¶ 13.

18 **OBJECTION NO. 52:**

19 “In conclusion, it is my opinion that OCSC could better assure that e-filed
20 complaints to be conditionally sealed or that must be kept confidential by statute are
21 in fact kept inaccessible to the public by changing its e-filing user interface to
22 require the filer to either check a box or make radio-button selections on the
23 interface, which would designate whether public access should be allowed to the
24 complaint or not. This would eliminate the additional possibility for human error
25 that the present system poses by making the security of the complaint dependent on
26 the LPS catching one of several specific key words or statutory code sections in the
27 text-based comment box of OCSC's e-filing interface or on the face page of the
28 complaint. Such an upgrade to the current system would not increase the risk that

1 confidential or conditionally sealed complaints might be made accessible to the
2 public. Such an upgrade would also allow the public to access any complaint that
3 the filer's selections have coded as being appropriate for public access, in a timely
4 manner after the e-filer submits the complaint to the court and before clerk review
5 or other processing.” (ECF No. 89, Rosenberg Decl. ¶ 13. 6:19-7:6.)

6 **GROUND FOR OBJECTION NO. 52:**

7 **Lack of foundation; improper expert opinion; lack of reliability; failure**
8 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

9 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1)
10 OCSC’s CCMS; 2) the functionality of CCMS with respect to designation of
11 confidential complaints or complaints that are to be sealed; and 3) whether and how
12 CCMS could be re-programmed or upgraded by OCSC programmers. Dr.
13 Rosenberg does not profess to have any knowledge of or familiarity with CCMS –
14 because he has none – and thus cannot know its technological capabilities,
15 functionality, and/or possibilities.

16 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg’s CV
17 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in “Human
18 Factors,” and describes himself as “[a]n accomplished human factors engineer ...
19 specializing in analysis and design of mobile computing devices, complex systems,
20 user centered design, information architecture, user experience....” ECF No. 89,
21 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any
22 background or expertise in computer programming generally or in the
23 programming or creation of court case management systems specifically.

24 As a result, Dr. Rosenberg is not qualified to opine as to CCMS’s capabilities
25 and functionality, nor is he qualified to opine as to what may or may not be possible
26 with respect to re-programming the system to add new features or functions. *See*
27 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839
28 (courts properly exclude expert testimony where expert offers opinions outside area

1 of expertise).

2 Furthermore, Dr. Rosenberg's opinion on these matters should be excluded
3 because they are not "reliable," as required for the admission of scientific expert
4 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate
5 personal knowledge of OCSC's computer systems or that his opinions are based on
6 scientific foundations. *See Morrison*, 2016 WL 3457725, at *3–4 (reliability may
7 be shown by personal knowledge or scientific basis). And "[a]n opinion based
8 on ... unsubstantiated and undocumented information is the antithesis of the
9 scientifically reliable expert opinion admissible under *Daubert* and Rule 702."
10 *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of
11 the reasoning underlying his opinions. That is fatal. An expert must, at minimum,
12 provide the basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853.
13 If he does not, courts rightly disregard the opinions offered as "unsubstantiated and
14 subjective, and therefore unreliable and inadmissible." *Id.* That is the proper
15 course here.

16 Dr. Rosenberg's opinions on these matters should also be excluded because he
17 failed to provide the necessary written disclosures under Federal Rule of Civil
18 Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have
19 applied them when an expert's testimony is offered to the court in connection with
20 summary judgment motions, reasoning that in such situations, the expert has 'entered
21 the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.
22 Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data
23 considered by the witness in forming" his opinion; a list of prior cases in which the
24 witness has served as an expert witness; and the witness's compensation. Fed. R.
25 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no
26 detail regarding the facts or data he considered in forming his various conclusions.
27 And a report that describes "none of the underlying data or observations" relied on
28 by the expert is deficient. *Taser Int'l*, 2007 WL 2947564, at *8-9. Because Dr.

1 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was
2 never given the opportunity to probe the basis of his views, including by deposition.
3 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at *8-9 (excluding
4 expert testimony where the defendant was rendered unable to effectively respond to
5 testimony because of party's failure to disclose); *Colony Holdings*, 2001 WL
6 1398403, at *6 (excluding testimony because expert "was not disclosed as an expert
7 witness, no expert report was prepared and produced, and Defendants did not have
8 the opportunity to depose and examine [the expert] regarding the reliability of his
9 opinions").

10 In addition, Dr. Rosenberg's conclusion that a check-box or push-button
11 feature would be better is based on a demonstrably false premise – that filers
12 always comply with filing requirements regarding confidential complaints. OCSC
13 has already established numerous examples where filers disregarded an express
14 requirement to note confidential treatment on the caption page of a complaint. *See*
15 ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact
16 number of these examples, CNS concedes that 13 confidential complaints would
17 have been made public but for LPS review. ECF No. 84, CNS Response to OCSC
18 SUF ("CNS Resp. to SUF"), ¶ 21. In other words, CNS concedes the dispositive
19 fact that, but for LPS review, more than a dozen confidential complaints would
20 have been made public. Consequently, because we know that leaving the
21 confidentiality determination to filers is not a failsafe approach, LPS review would
22 still be required for the Court to fulfill its obligation to do all it can to ensure that
23 complaints that are required by law to be kept confidential are not accidentally
24 made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs.
25 Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code §
26 340.1(m); *Mao's Kitchen, Inc.*, 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal.
27 Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3,
28 Kruse Decl. ¶ 13.

1 **IV. OBJECTION TO DEPOSITION OF JONATHAN FETTERLY**

2 **OBJECTION NO. 53:**

3 “Attached hereto as Exhibit 16 are true and correct copies of excerpts from
4 Sara Ochoa’s deposition transcript relating to the issues raised in Defendant’s Motion
5 for Summary Judgment, and related exhibits..” (ECF No. 90, Declaration of
6 Johnathan Fetterly (“Fetterly Decl.”) ¶ 15, 3:13-15.)

7 **GROUND FOR OBJECTION NO. 53:**

8 **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.
9 R. Evid. 701.

10 “It is insufficient for a party to submit, without more, an affidavit from []
11 counsel identifying the names of the deponent, the reporter, and the action and stating
12 that the deposition is a ‘true and correct copy.’” *Orr v. Bank of Am., NT & SA*, 285
13 F.3d 764, 774 (9th Cir. 2002). “Such an affidavit lacks foundation even if the affiant-
14 counsel were present at the deposition.” *See id.*

15 Here, because Exhibit 16 does not contain a signed court reporter certification
16 page, *see* ECF No. 91, p. 901, Mr. Fetterly’s declaration that the transcript is a “true
17 and correct copy” is insufficient to authenticate the exhibit. Further, Mr. Fetterly’s
18 statement that the related deposition exhibits are attached is false. The deposition
19 transcript attached as Exhibit 16 does not contain any exhibits.

20 **OBJECTION NO. 54:**

21 ECF No. 91, Exhibit 16 to Fetterly Decl. (pp. 749-901).

22 **GROUND FOR OBJECTION NO. 54:**

23 **Not properly authenticated.** Fed. R. Evid. 901.

24 “A deposition or an extract therefrom is authenticated in a motion for summary
25 judgment when it identifies the names of the deponent and the action and includes
26 the reporter’s certification that the deposition is a true record of the testimony of the
27 deponent.” *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone v. Citicorp Credit Servs.*,
28

1 *Inc.*, 60 F.Supp.2d 1040, 1045 (S.D. Cal. 1997) (excluding a deposition for failure to
2 submit a signed certification from the reporter).

3 Here, Exhibit 16 does not contain a signed court reporter certification page.
4 ECF No. 91, p. 901. Thus, the deposition transcript has not been properly
5 authenticated and is therefore inadmissible. Further, Mr. Fetterly's statement that the
6 related deposition exhibits are attached is false. The deposition transcript attached
7 as Exhibit 16 does not contain any exhibits.

8 **OBJECTION NO. 55:**

9 "Attached hereto as Exhibit 17 are true and correct copies of excerpts from
10 Debbie Kruse's deposition transcript relating to the issues raised in Defendant's
11 Motion for Summary Judgment, and related exhibits." (ECF No. 90, Fetterly Decl.
12 ¶ 16, 3:13-15.)

13 **GROUND FOR OBJECTION NO. 55:**

14 **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.
15 R. Evid. 701.

16 "It is insufficient for a party to submit, without more, an affidavit from []
17 counsel identifying the names of the deponent, the reporter, and the action and stating
18 that the deposition is a 'true and correct copy.'" *Orr*, 285 F.3d 764, 774 (9th Cir.
19 2002). "Such an affidavit lacks foundation even if the affiant-counsel were present
20 at the deposition." *See id.*

21 Here, because Exhibit 17 does not contain a signed court reporter certification
22 page, *see* ECF No. 91, p. 1043, Mr. Fetterly's declaration that the transcript is a "true
23 and correct copy" is insufficient to authenticate the exhibit. Further, Mr. Fetterly's
24 statement that the related deposition exhibits are attached is false. The deposition
25 transcript attached as Exhibit 17 does not contain any exhibits.

26 **OBJECTION NO. 56:**

27 ECF No. 91, Exhibit 17 to Fetterly Decl. (pp. 902-1043).
28

1 **GROUND FOR OBJECTION NO. 56:**

2 **Not properly authenticated.** Fed. R. Evid. 901.

3 “A deposition or an extract therefrom is authenticated in a motion for summary
4 judgment when it identifies the names of the deponent and the action and includes
5 the reporter’s certification that the deposition is a true record of the testimony of the
6 deponent.” *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045
7 (excluding a deposition for failure to submit a signed certification from the reporter).

8 Here, Exhibit 17 does not contain a signed court reporter certification page.
9 ECF No. 91, p. 1043. Thus, the deposition transcript has not been properly
10 authenticated and is therefore inadmissible. Further, Mr. Fetterly’s statement that the
11 related deposition exhibits are attached is false. The deposition transcript attached
12 as Exhibit 17 does not contain any exhibits.

13 **OBJECTION NO. 57:**

14 “Attached hereto as Exhibit 18 are true and correct copies of excerpts from
15 David Yamasaki’s deposition transcript relating to the issues raised in Defendant’s
16 Motion for Summary Judgment, and related exhibits.” (ECF No. 90, Fetterly Decl.
17 ¶ 17, 3:21-23.)

18 **GROUND FOR OBJECTION NO. 57:**

19 **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.
20 R. Evid. 701.

21 “It is insufficient for a party to submit, without more, an affidavit from []
22 counsel identifying the names of the deponent, the reporter, and the action and stating
23 that the deposition is a ‘true and correct copy.’” *Orr*, 285 F.3d at 774. “Such an
24 affidavit lacks foundation even if the affiant-counsel were present at the deposition.”
25 *See id.*

26 Here, because Exhibit 18 does not contain a signed court reporter certification
27 page, *see* ECF No. 91, p. 1198, Mr. Fetterly’s declaration that the transcript is a “true
28 and correct copy” is insufficient to authenticate the exhibit. Further, Mr. Fetterly’s

1 statement that the related deposition exhibits are attached is false. The deposition
2 transcript attached as Exhibit 18 does not contain any exhibits.

3 **OBJECTION NO. 58:**

4 ECF No. 91, Exhibit 18 to Fetterly Decl. (pp. 1044-1198).

5 **GROUND FOR OBJECTION NO. 58:**

6 **Not properly authenticated.** Fed. R. Evid. 901.

7 “A deposition or an extract therefrom is authenticated in a motion for summary
8 judgment when it identifies the names of the deponent and the action and includes
9 the reporter’s certification that the deposition is a true record of the testimony of the
10 deponent.” *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045
11 (excluding a deposition for failure to submit a signed certification from the reporter).

12 Here, Exhibit 18 does not contain a signed court reporter certification page.
13 ECF No. 91, p. 1198. Thus, the deposition transcript has not been properly
14 authenticated and is therefore inadmissible. Further, Mr. Fetterly’s statement that the
15 related deposition exhibits are attached is false. The deposition transcript attached
16 as Exhibit 18 does not contain any exhibits.

17 **OBJECTION NO. 59:**

18 “Attached hereto as Exhibit 19 are true and correct copies of excerpts from
19 Jeff Wertheimer’s deposition transcript relating to the issues raised in Defendant’s
20 Motion for Summary Judgment, and related exhibits.” (ECF No. 90, Fetterly Decl.
21 ¶ 18, 3:25-27.)

22 **GROUND FOR OBJECTION NO. 59:**

23 **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.
24 R. Evid. 701.

25 “It is insufficient for a party to submit, without more, an affidavit from []
26 counsel identifying the names of the deponent, the reporter, and the action and stating
27 that the deposition is a ‘true and correct copy.’” *Orr*, 285 F.3d at 774. “Such an
28 affidavit lacks foundation even if the affiant-counsel were present at the deposition.”

1 *See id.*

2 Here, because Exhibit 19 does not contain a signed court reporter certification
3 page, *see* ECF No. 91, p. 1302, Mr. Fetterly's declaration that the transcript is a "true
4 and correct copy" is insufficient to authenticate the exhibit. Further, Mr. Fetterly's
5 statement that the related deposition exhibits are attached is false. The deposition
6 transcript attached as Exhibit 19 does not contain any exhibits.

7 **OBJECTION NO. 60:**

8 ECF No. 91, Exhibit 19 to Fetterly Decl. (pp. 1099-1302).

9 **GROUND FOR OBJECTION NO. 60:**

10 **Not properly authenticated.** Fed. R. Evid. 901.

11 "A deposition or an extract therefrom is authenticated in a motion for summary
12 judgment when it identifies the names of the deponent and the action and includes
13 the reporter's certification that the deposition is a true record of the testimony of the
14 deponent." *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045
15 (excluding a deposition for failure to submit a signed certification from the reporter).

16 Here, Exhibit 19 does not contain a signed court reporter certification page.
17 ECF No. 91, p. 1302. Thus, the deposition transcript has not been properly
18 authenticated and is therefore inadmissible. Further, Mr. Fetterly's statement that the
19 related deposition exhibits are attached is false. The deposition transcript attached
20 as Exhibit 19 does not contain any exhibits.

21 **OBJECTION NO. 61:**

22 "Attached hereto as Exhibit 20 are true and correct copies of excerpts from
23 Michael Planet's deposition transcript in that matter relating to the issues raised in
24 Defendant's Motion for Summary Judgment, and related exhibits." (ECF No. 90,
25 Fetterly Decl. ¶ 19, 4:5-7.)

26 **GROUND FOR OBJECTION NO. 61:**

27 **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.
28 R. Evid. 701.

1 “It is insufficient for a party to submit, without more, an affidavit from []
2 counsel identifying the names of the deponent, the reporter, and the action and stating
3 that the deposition is a ‘true and correct copy.’” *Orr*, 285 F.3d at 774. “Such an
4 affidavit lacks foundation even if the affiant-counsel were present at the deposition.”
5 *See id.*

6 Here, because Exhibit 20 does not contain a signed court reporter certification
7 page, *see* ECF No. 91, p. 1319, Mr. Fetterly’s declaration that the transcript is a “true
8 and correct copy” is insufficient to authenticate the exhibit.

9 **OBJECTION NO. 62:**

10 ECF No. 91, Exhibit 20 to Fetterly Decl. (pp. 1303-1333).

11 **GROUND FOR OBJECTION NO. 62:**

12 **Not properly authenticated; inadmissible hearsay.** Fed. R. Evid. 901; Fed.
13 R. Evid. 801, 802.

14 “A deposition or an extract therefrom is authenticated in a motion for summary
15 judgment when it identifies the names of the deponent and the action and includes
16 the reporter’s certification that the deposition is a true record of the testimony of the
17 deponent.” *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045
18 (excluding a deposition for failure to submit a signed certification from the reporter).
19 Here, Exhibit 20 does not contain a signed court reporter certification page. ECF No.
20 91, p. 1319. Thus, the deposition transcript has not been properly authenticated and
21 is therefore inadmissible.

22 Further, the deposition transcript and accompanying exhibits constitute
23 inadmissible hearsay as out-of-court statements offered for the truth of the matters
24 asserted.

25 **OBJECTION NO. 63:**

26 “The declarations filed as and comprising ECF Document Nos. 12 through 12-
27 3 in this case are all true and correct copies of the declarations previously filed in the
28 *Planet* case.” (ECF No. 90, Fetterly Decl. ¶ 21, 4:19-21.)

GROUND FOR OBJECTION NO. 63:

Lack of foundation as to personal knowledge. Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Fetterly's declaration does not lay adequate foundation for declarations filed in another proceeding. It is not enough that Mr. Fetterly characterizes the declarations as "true and correct copies." *Beyene v. Coleman Sec. Servs., Inc.*, 854 F.2d 1179, 1182 (9th Cir. 1988).

V. OBJECTIONS TO COURT REPORTER DECLARATIONS IN ECF NO. 12

OBJECTION NO. 64:

ECF No. 12 through ECF No. 12-3, Exs. 1-36 to RJN (p. 1-417).

GROUND FOR OBJECTION NO. 64:

Not properly authenticated; inadmissible hearsay; irrelevant. Fed. R. Evid. 901; Fed. R. Evid. 801, 802; Fed. R. Evid. 401, 402.

These declarations were prepared for and were submitted in another proceeding. Given that Mr. Fetterly did not properly authenticate the declarations, they are inadmissible.

Further, the declarations contain inadmissible hearsay. *See* ECF No. 12, Abbott Decl. ¶ 9 ("The following is a description of procedures used at some of the courts covered by CNS reporters under my supervision."); ECF No. 12, Angione Decl. ¶ 8 (as a supervisor he "observed and experienced the procedures used by reporters in many of these courts to access and review new civil complaints"); ECF No. 12, Brown Decl. ¶ 5 (as a supervisor she "observe[d] CNS's procedures for reviewing new civil complaints received for filing in these courts."); ECF No. 12, Marshall Decl. ¶ 9 (as a supervisor he has "observed and experienced the procedures used by CNS's reporters in many of these courts to access and review new civil complaints received by those courts for filing."); ECF No. 12, Venza Decl. ¶ 19 (as

1 a supervisor she has “observed CNS reporters use the following procedures to review
2 new civil petitions.”). Thus, these out-of court-statements cannot be offered for their
3 truth because they are not subject to cross-examination.

4 Finally, that other courts may provide a greater or lesser extent of access to
5 complaints, without first conducting a confidentiality review, is irrelevant to whether
6 timely access has been provided under the circumstances of *this* case by one of the
7 largest and busiest trial court systems in the nation and under California law that
8 obligates OCSC to protect litigant confidentiality. Indeed, none of the declarations
9 indicate whether these courts conduct any confidentiality review before making new
10 complaints publicly available. Nor does CNS offer any evidence showing that the
11 referenced state courts have confidentiality requirements similar to those imposed by
12 California law.

13 **VI. OBJECTIONS TO OTHER COURTS’ E-FILING RULES & COURT**
14 **DOCKETS IN ECF NO. 92**

15 **OBJECTION NO. 65:**

16 ECF No. 92, Exs. 1-9 to RJN (p. 5-52).

17 **GROUND FOR OBJECTION NO. 65:**

18 **Irrelevant.** Fed. R Evid. 401, 402.

19 As explained in OCSC’s response to CNS’s Requests for Judicial Notice, filed
20 concurrently herewith, tat other courts’ e-filing rules may require confidential filings
21 to be filed in paper is irrelevant to whether timely access has been provided under the
22 circumstances of *this* case by one of the largest and busiest trial court systems in the
23 nation and under California law that obligates OCSC to protect litigant
24 confidentiality. Indeed, none of the court rules indicate whether these courts conduct
25 any confidentiality review before making new complaints publicly available nor
26 correlate the purpose for filing in paper with protecting confidentiality. Further, CNS
27 does not offer any evidence showing that the referenced courts have confidentiality
28

requirements similar to those imposed by California law.

OBJECTION NO. 66:

ECF No. 92, Exs. 10-13 to RJN (p. 53-77).

GROUND FOR OBJECTION NO. 66:

Contradicted by evidence; incomplete, misleading, and prejudicial. Fed. R. Evid. 403.

As explained in the declaration by Sara Ochoa submitted in support of OCSC's reply brief and OCSC's response to CNS's Requests for Judicial Notice, both filed concurrently herewith, the court dockets for four Orange County Superior Court contained in Exhibits 10-13 are contradicted by other evidence in this matter, incomplete, misleading and prejudicial.

CNS cites these exhibits in response to OCSC's assertion in its Statement of Uncontroverted Facts and Conclusions of Law ("SUF") for the proposition that "[a]t most, 13 of the cases listed in Exhibits A and B to the Ochoa Declaration and referred to in Paragraph 21 of the Ochoa Declaration represent case-initiating filings where an LPS properly kept a document confidential based on LPS review." ECF No. 84, ¶ 21. CNS appears to contend that because a case initiating document is currently available on the public dockets in these matters, OCSC's statement is somehow untrue. But CNS's position is unsupported.

In some of the cases that CNS cites, certain attachments to the complaints *were properly* filed under seal and remain under seal; and in one case that CNS cites, an unredacted version of a complaint *was properly* filed under seal and remains under seal, while the redacted version of the complaint is available on the public docket. Ochoa Decl. ISO Reply ¶¶ 19(a)-(c), 20. Thus, CNS's reliance on these cases is inapposite. These cases do not undermine OCSC's position that but for LPS review, the attachments to the complaints or the unredacted version of a complaint would have been publicly available. *See id.*

1 Dated: January 16, 2018

JONES DAY

2
3 By: /s/ Robert A. Naeve
4 Robert A. Naeve

5 Attorneys for Defendant
6 DAVID YAMASAKI

7 NAI-1503341898v1
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28